



City of  
**Rockville**  
Get Into It

**Historic District Commission Staff Report:  
Courtesy Review  
HDC2012-00588, 104 W. Jefferson Street**

**MEETING DATE:** 6/21/12

**REPORT DATE:** 6/14/12

**FROM:** Robin D. Ziek, Preservation Planner,  
Planning, CPDS  
240.314.8236  
[rzeik@rockvillemd.gov](mailto:rzeik@rockvillemd.gov)

**APPLICATION DESCRIPTION:** Courtesy Review of proposed  
resubdivision of 104 West Jefferson  
Street, a property within the West  
Montgomery Avenue Historic District  
known as the Prettyman House

**APPLICANT:** Michael K. Fegan  
104 West Jefferson Street  
Rockville, Maryland 20850

**FILING DATE:** Requested by Planning Commission on 5/23/12

**RECOMMENDATION:** Recommend approval of this resubdivision.



**EXECUTIVE SUMMARY:** The Planning Commission, at its meeting of May 23, requested that the HDC provide a courtesy review of the resubdivision proposed by Final Record Plat PLT2012-000517, per Sec. 25.04.04.b.1(d) of the Zoning Ordinance. Per Sec. 25.21.22.b, in a resubdivision of existing lots, the Planning Commission must consider whether the plat maintains, to the extent feasible, the average area and frontage of existing lots within 500 feet of the proposed resubdivision. The Planning Commission posed four questions related to the subject application for property within the West Montgomery Avenue Historic District, including impacts on the historic property itself, the Historic District and future historic designations on South Van Buren Street, as well as the impact of dividing the property into two equal lots rather than lots of 18,482 square feet and 9,057 square feet.

## Table of Contents

RECOMMENDATION .....	3
SITE DESCRIPTION .....	3
Vicinity .....	3
Site Analysis: .....	4
Site History: .....	6
DISCUSSION OF THE PROPOSED PROJECT and MATERIALS .....	8
COMMUNITY OUTREACH .....	11
RECOMMENDATION TO PLANNING COMMISSION .....	11
ATTACHMENTS .....	12
Aerial map	
Zoning map	
Secretary of the Interior's Standards for Rehabilitation	
Proposed Plat	
Planning Commission Staff Report (May 23, 2012 meeting)	
Testimony received to date	



## RECOMMENDATION

Staff finds that the proposed resubdivision of the lot associated with the Prettyman House meets Secretary of the Interior's Standards for Rehabilitation #1, #2, and #3, with the potential for addressing Standards #8, #9, and #10 at the time when new construction is proposed. The review of the proposed resubdivision has addressed the potential effects on the historic character of the Prettyman House and its setting, on that of the West Montgomery Avenue Historic District, and of the confronting historic properties on South Van Buren Street.

## SITE DESCRIPTION

**Location:** 104 West Jefferson Street  
**Applicant:** Gary Michael and Micki Fegan  
**Land Use Designation:** Detached Residential (Restricted Residential)  
**Zoning District:** R-90 HD  
**Existing Use:** Residential  
**Parcel Area:** 27,538 sf  
**Proposed lots:** 18,482 sf; and 9,057 sf  
**Subdivision:** Exchange and New Exchange, P431

### Vicinity

Surrounding Land Use and Zoning			
Location	Zoning	Planned Land Use	Existing Use
North	R-90 HD and MXT HD	Detached, Restricted Residential; and Mixed-Use Transition Historic District	Detached, Restricted Residential
East	R-90 HD	Detached, Restricted Residential Historic District	Parking lot
South	R-90	Detached, Restricted Residential	Detached, Restricted Residential
West	R-90 and R-90 HD	Detached, Residential; and Detached, Residential Historic District	Detached, Residential



Front elevation: S. Van Buren St. and W. Jefferson St.



Back yard, looking N. to house



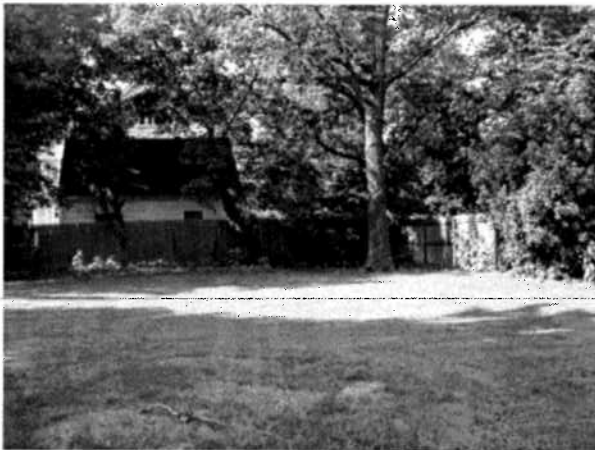
Looking east towards house, from S. Van Buren St.



Looking south along S. Van Buren St.

### **Site Analysis:**

The subject property is located on the southeast corner of West Jefferson Street and South Van Buren Street. The deeded lot is made up of 27,538 sf of land, and is currently zoned R-90 HD. The property is relatively flat, and extends along South Van Buren Street for 232 ft. The front yard is relatively open, while the back yard has been enclosed with a six foot high fence required by the presence of a swimming pool in the back yard. The backyard area is landscaped at the edges, but the central areas include an open patio/pool and lawn area. The fence along South Van Buren Street is positioned, as required by the Zoning Ordinance, at a setback that meets the western edge of the house. The area between the street and the fence is heavily vegetated with trees, shrubs and vines. There is a curb cut and parking area at the south end of the property.



Back yard, looking south from pool



Curb cut and street frontage along S. Van Buren St

South Van Buren Street has developed over time as property was sold off from the original 13.5 acres associated with the Prettyman House. The street itself originally served as "Prettyman Lane," a farm lane leading to a stone dairy, stables and other outbuildings, all of which are no longer present. Two neighboring properties, across the street at 200 West Jefferson Street and 105 South Van Buren Street, are also included in the West Montgomery Avenue Historic District. An additional property, the Waring

and Kate Evans House at 117 South Van Buren Street, is locally designated as an individual historic resource in the City. This 1922 bungalow was originally associated with 10 acres that were purchased from the Prettyman family in 1922 [*MHT form 2002, Section 8*].



Evans House, 117 South Van Buren Street



Adjacent neighbor, 118 South Van Buren Street

Over time, South Van Buren Street has been developed through individual land sales (by deed) rather than by a single subdivision. The effect is a quiet residential street, with houses in a variety of architectural styles and sizes, as well as variable-sized lots with mature landscaping and trees. Half of the homes on the street are included in the *2011 Historic Buildings Catalog*. Inclusion in this catalog was based on an architectural survey and assessment of architectural integrity of pre-1945 houses remaining in the City, as well as a selected few houses that post-date 1945. While serving primarily as an educational tool to provide a view of Rockville architecture through the years, the catalog also serves to identify structures that have sufficient architectural integrity that historic designation could be considered in the future.<sup>1</sup> Several houses along South Van Buren Street have similar character to those included in the catalog, but they were constructed after the 1945 cutoff.<sup>2</sup>

To the east of the property are three parcels associated with the Rockville Academy building. The property containing the Academy building is in the historic district while the parking lot between the subject property and the Academy is not designated historic. Properties to the north, including the Baptist cemetery and Rockville Methodist Church, are designated historic.

---

<sup>1</sup> #105, 117, 118, 124, 126, 127, 128, 130, 135 South Van Buren Street are included in the catalog, as well as 104 and 200 West Jefferson Street.

<sup>2</sup> This includes #131 (1950, Tudor Revival), #129 (1949, Colonial Revival), and #132 (1947, Colonial Revival) South Van Buren Street.



#130, included in the Catalog

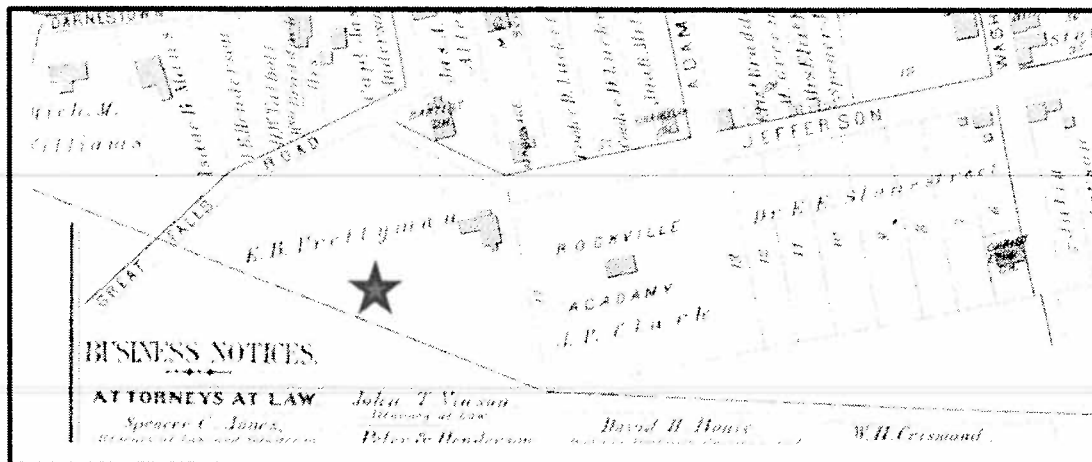


#131, not included in the Catalog

### Site History:

The subject property is a significant historic resource within the West Montgomery Avenue Historic District. It is known as the “Prettyman House” for its longterm association with the Prettyman family. The house was built in 1841 for Solomon and Matilda Holland, on their 13.5 acre property at the west edge of town adjacent to the Rockville Academy. Their daughter, Anne, married a gentleman in the U.S. Navy named Zachariah Johnston. The Johnston’s daughter, Lydia, married a teacher from the Rockville Academy, Elijah Barrett Prettyman, in 1855. They purchased twelve acres of the Hollands’ property in 1867; and purchased the house and the remaining 1.5 acres after Mrs. Holland’s death in 1872. The Prettyman family was associated with this house until 1968, at which point it was sold for the first time to an unrelated owner.

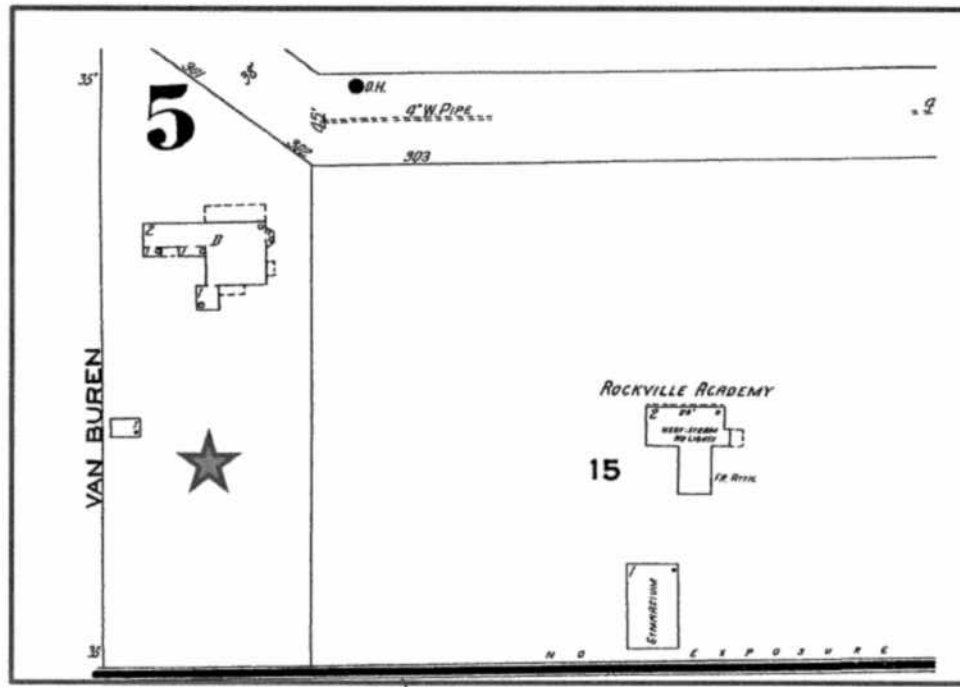
The property is included in the 1879 *Hopkins Atlas* of Montgomery County, which illustrates the more rural character of this area south of West Jefferson Street, in contrast to the smaller town lots on the north side of the street.



1879 Atlas – G. M. Hopkins

The subject property is not depicted on the earliest Sanborn Fire Insurance Maps, while the properties on the north side of West Jefferson Street in this vicinity are included as early as 1897. Rockville

Academy is depicted on the 1903 Sanborn Map, and the Prettyman House is included on the 1924 map. As the Sanborn Maps were printed as a commercial venture and focused on areas of relatively dense development, it is not unusual that this larger property at the edge of town wasn't include in the early maps.



Sanborn Map – 1924, Sheet 5

The Prettyman House was built as a Greek Revival 1-1/2 story dwelling. In 1876, the house was renovated to add additional height. The main block of the house was enlarged with a second story under an Italianate pyramidal roof. The kitchen wing was enlarged with the addition of a second story under a mansard roof. The house has several additions, including a one-story rear porch and an attached utility building that has the form of a small garage. The property is well-landscaped around the house and along its edges. There is a patio area at the back kitchen door visible from South Van Buren Street, and a carport. Another patio at the back of the house opens to the pool in the back yard, all of which is behind the privacy fence. There is a small open shed on the south side of the pool, and the remaining back yard area, south of this open shed, is open lawn.



Back yard, looking north towards house



Carport along S. Van Buren St.

## **DISCUSSION OF THE PROPOSED PROJECT**

The Planning Commission has approval authority for subdivisions and resubdivisions in the city. As this property is located within the West Montgomery Avenue Historic District, the Planning Commission has requested a recommendation from the Historic District Commission on the following questions:

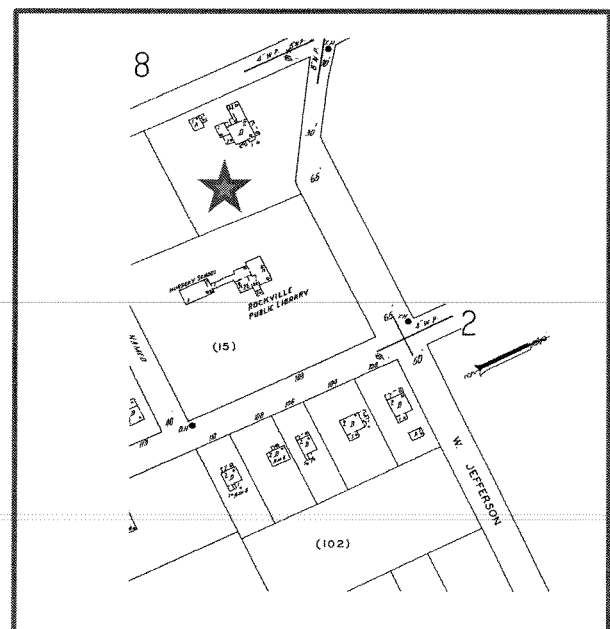
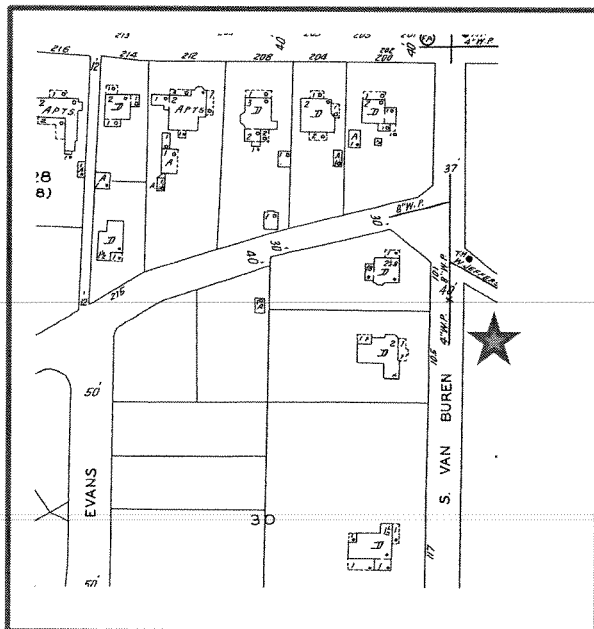
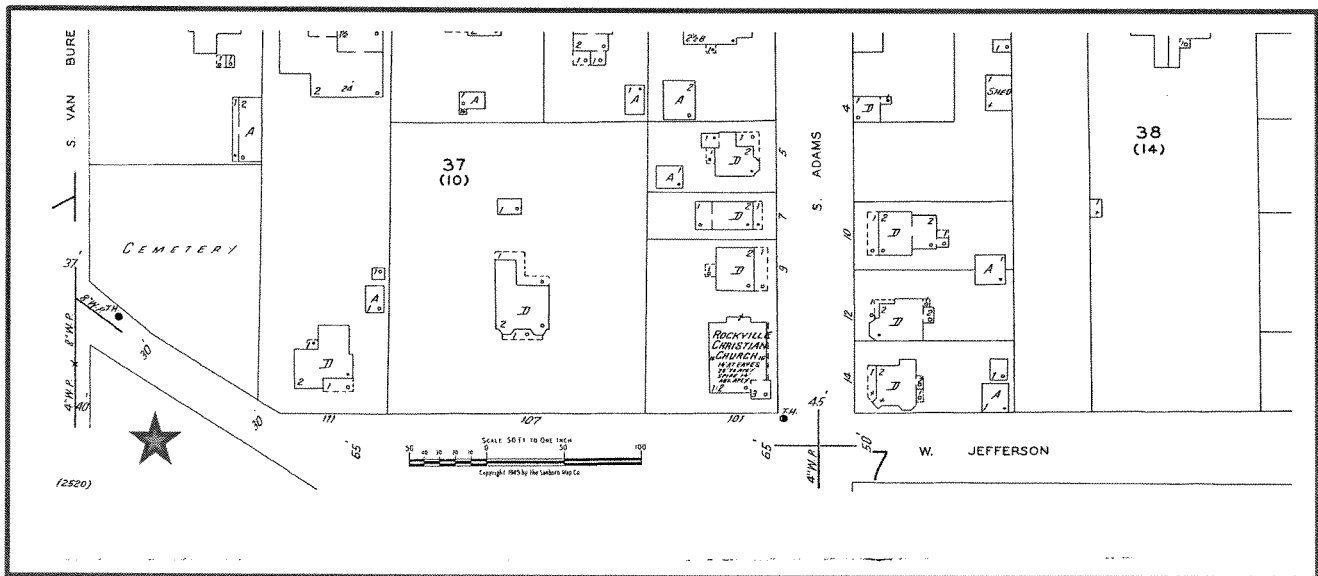
- 1) What is the impact of the proposed resubdivision on 104 West Jefferson Street?
- 2) What is the impact of the proposed resubdivision on the West Montgomery Avenue Historic District?
- 3) If the property were divided into equal lots, what is the HDC opinion of the resubdivision?
- 4) What would be the impact of the proposed lot on future designations on South Van Buren Street?

### **1) What is the impact of the proposed resubdivision on 104 West Jefferson Street?**

A proposed resubdivision can't reduce the historic significance of a property, but it can change the visual effect and context of a property. Staff notes that the environmental setting for the Prettyman House has been reduced over time from a rural 13.5 acres to an in-town lot of .63 acres, while retaining its significance in the city's history. The effect of the proposed resubdivision on the historic character of the Prettyman House will depend to a large degree on the HDC's approval of new construction at a new lot. The benefit of providing a resubdivision that retains a substantial amount of property at the back of the house is that the landscape that now characterizes the property will not be disturbed. The proposed lot is essentially an open lawn, and only one tree would have to be removed to use the existing curb cut at the south end of the proposed new lot. The street frontage is heavily wooded, and would not necessarily have to be disturbed to accommodate the construction of a new house at the proposed south lot.

## 2) What is the impact of the proposed resubdivision on the West Montgomery Avenue Historic District itself?

In 1974, the local designation of the West Montgomery Avenue Historic District successfully provided the means for preserving the historic character of this part of Rockville which, while developing over time, strongly retains its 19<sup>th</sup> century historic resources and their relationship to each other. The 1949 Sanborn map, below, illustrates the variety of lot sizes and historic resources in the West Montgomery Avenue Historic District that are preserved today.



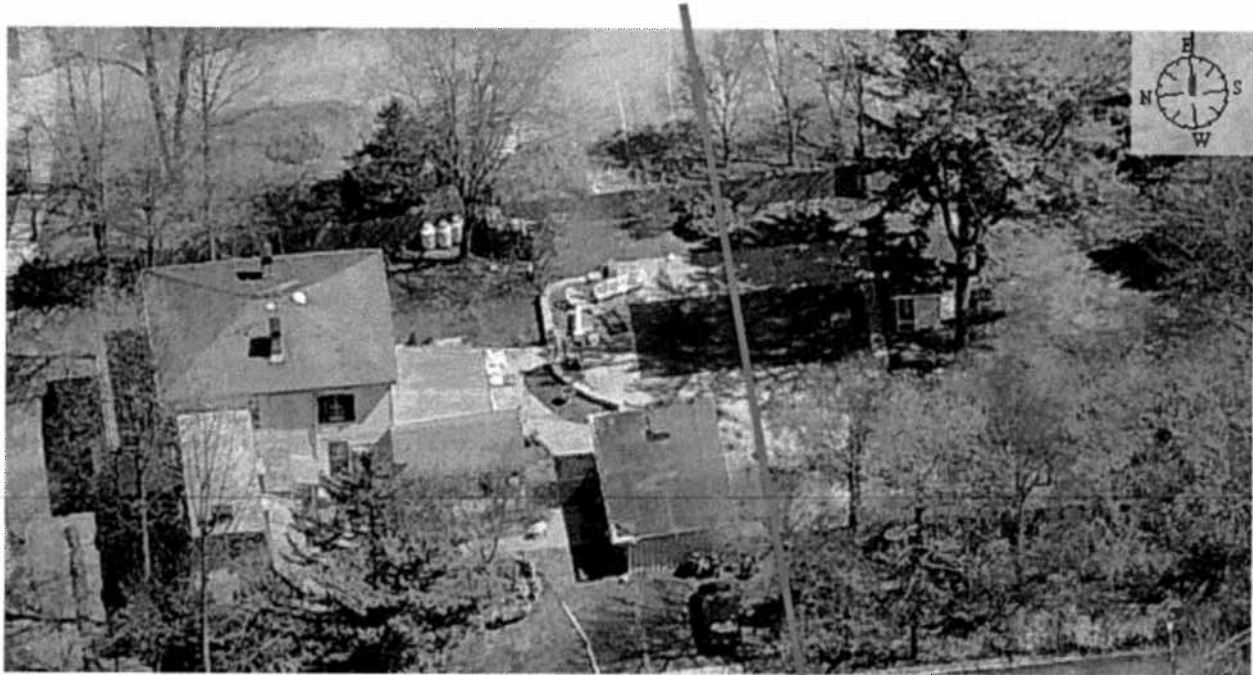
Prettyman house location

While there have been modifications to West Jefferson Street, which was widened along with the reconfiguration of the Great Falls Road and West Montgomery Avenue intersection, the Prettyman House still faces the street and looks across to the Baptist Cemetery and other 19<sup>th</sup> century houses in the historic district. These important and characteristic relationships would not be disturbed with the proposed resubdivision.

A significant factor in this evaluation is that the HDC has review and approval authority over any new construction within the West Montgomery Avenue Historic District. The obligation of the Historic District Commission will be to work to preserve the historic character of the historic district when construction is proposed. This will involve, as always, a focus on the size, scale, massing and height of any new construction in this particular location in the context of the larger historic district. Ways of addressing preservation of character of the historic district may include limiting the size and height of the proposed new house to avoid overshadowing the Prettyman House (both figuratively and literally), and to avoid intrusions into the well-preserved views from and along West Jefferson Street.

2) If the property were divided into equal lots, what is the HDC opinion of the resubdivision?

If the current property were divided into equal lots, the resubdivision line would fall just south of the existing carport, and through the middle of the pool. The pool would be removed, and a large tree now just south of the existing pool shed, which would be on the new lot, might be in the path of new construction.



The back yard of the historic Prettyman House property would be severely reduced, effectively further reducing the garden setting of the historic property as it exists today, and which in part reflects its past association with extensive grounds. The smaller lot size would also reduce the potential for future owners to modify the property (albeit with HDC review/approval), due to required setbacks and lot coverage.

Additionally, with the zoning requirement of 9,000 sf minimum for each building lot, an equal resubdivision would likely be the final reduction of the property associated with the Prettyman House. Spatially, a parity or equality would be established between the historic resource and a new house on the south lot. However, the establishment of parity would reduce the environmental setting below a threshold whereby physical appearance could demonstrate the historic fact that the Prettyman House originally was associated with a larger property. This factor of size helps to preserve the historic character of the property by ensuring that new construction is appropriately separated from the historic house, and provides an opportunity for public education and enjoyment of history at this location.

Concerns have been expressed about that potential for further resubdivision of the lot containing the Prettyman House, which is in excess of 18,000 square feet. This would likely only occur if the Prettyman House were to be destroyed, as the potential lot line would go through a portion of the existing house. Staff notes that a covenant or conservation easement could be recorded for the property that would limit further subdivision of the larger lot but the property owner would have to agree.

#### 4) What would be the impact of the proposed lot on future designations on South Van Buren Street?

As noted above on pages 4-6, a substantial number of houses on South Van Buren Street are architecturally noteworthy. A case could easily be made for a local historic district that focused on early to mid-20<sup>th</sup> century residential architecture. A historic district in this location would demonstrate the pre-World War II development patterns that depended on lots sold off by deed, with houses built by individuals over time. Development over time is demonstrated in East Rockville with the Rockville Park subdivision, and that history has recently merited National Register listing.

The proposed resubdivision, with a 9,057 sf lot and new construction that will be reviewed by the HDC, is in keeping with the development history of South Van Buren Street and should not have an adverse impact on its future historic character. However, if this were seen as a precedent for resubdivision on larger lots and more resubdivisions or even demolitions occurred, the street likely would no longer be eligible for designation as a district, as this could significantly alter the environmental setting and number of potential historic resources on the block.

Designations of individual properties would still be a possibility, as each individual property would be evaluated on its own merit.

---

## **COMMUNITY OUTREACH**

- Posting of sign on property two weeks prior to meeting
- Postcard notices sent out two weeks prior to meeting
- Staff report posted on City's web site one week prior to meeting

---

## **RECOMMENDATION TO PLANNING COMMISSION**

The HDC recommends that the proposed subdivision could be appropriate at this location, provided that proposed new construction is compatible in building height, massing and scale with nearby historic

structures. With an appropriate design, it is unlikely that new construction on the proposed lot would have negative impacts on the Prettyman House, the West Montgomery Avenue Historic District or any potential designations of all or part of South Van Buren Street. The subdivision as proposed is recommended over an equal subdivision of the property in order to maximize the environmental setting for the Prettyman House.

**ATTACHMENTS**

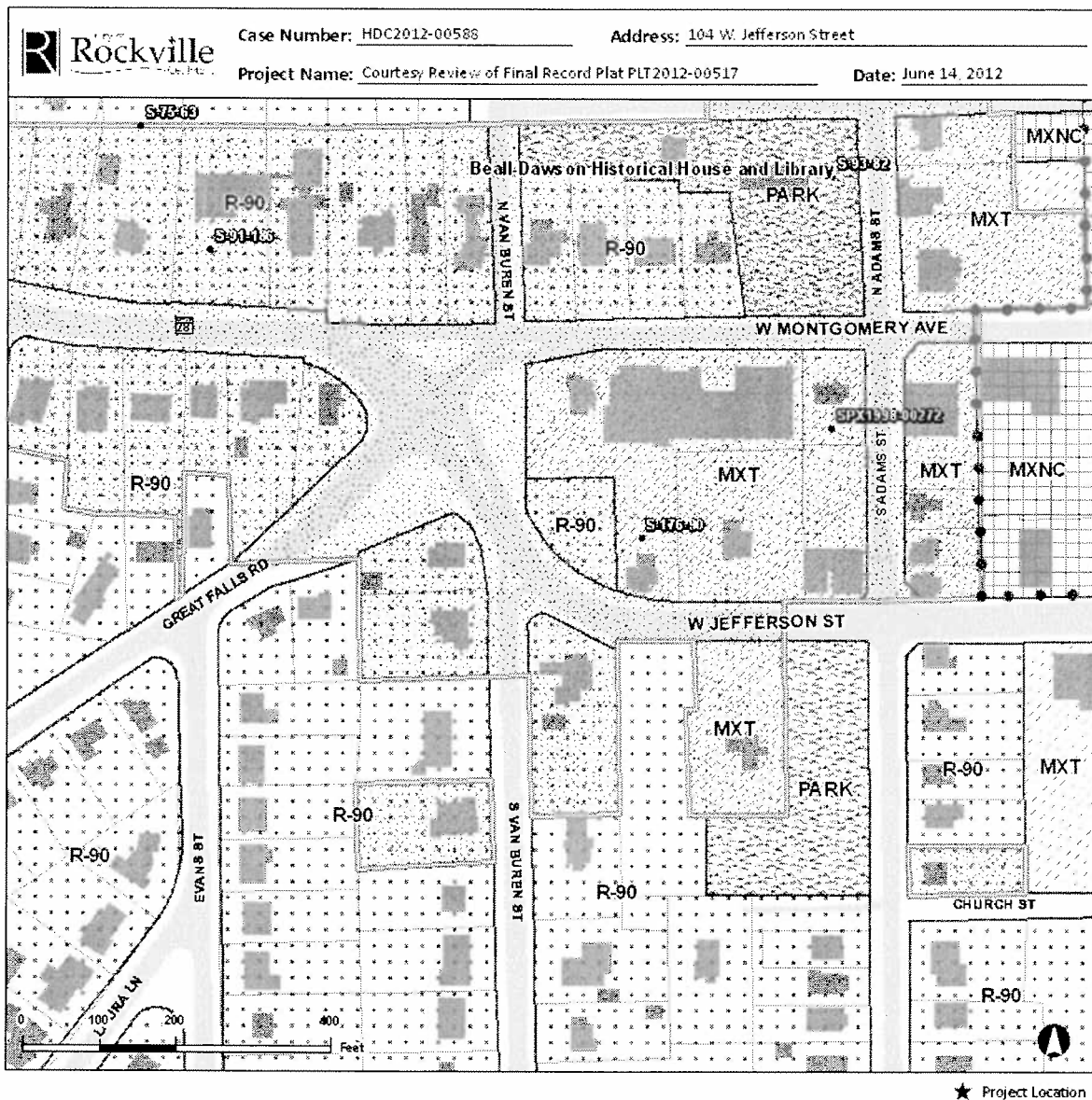
Aerial map .....	Circle 1
Zoning map .....	Circle 2
Secretary of the Interior's Standards for Rehabilitation .....	Circle 3
Proposed Plat .....	Circle 4,5
Planning Commission Staff Report (May 23, 2012 meeting) .....	Circle 6ff
Testimony received to date .....	Circle 123ff

## AERIAL PHOTO



★ Project Location

## ZONING MAP



## Legend

- |  |                                     |  |
|--|-------------------------------------|--|
| R-400 - Residential Estate                                   | RMD-10 - Residential Medium Density | MXC - Mixed-Use Commercial               |
| R-200 - Suburban Residential                                 | RMD-15 - Residential Medium Density | MXCD - Mixed-Use Corridor District       |
| R-150 - Low Density Residential                              | RMD-25 - Residential Medium Density | MXE - Mixed-Use Employment               |
| R-90 - Single Unit Detached Dwelling, Restricted Residential | PD - Planned Development            | MXNC - Mixed-Use Neighborhood Commercial |
| R-75 - Single Unit Detached Dwelling, Residential            | IL - Light Industrial               | MXD - Mixed-Use Transition               |
| R-80 - Single Unit Detached Dwelling, Residential            | PARK - Park Zone                    | MXTD - Mixed-Use Transit District        |
| R-40 - Single Unit Semi-detached Dwelling, Residential       | MXB - Mixed-Use Business            | Special Exceptions                       |
| Clusters   | Historic Preservation Parcels       | Twinbrook Metro Performance District     |
| Planned Developments   | Lincoln Park Conservation Overlay   | Town Center Performance District         |

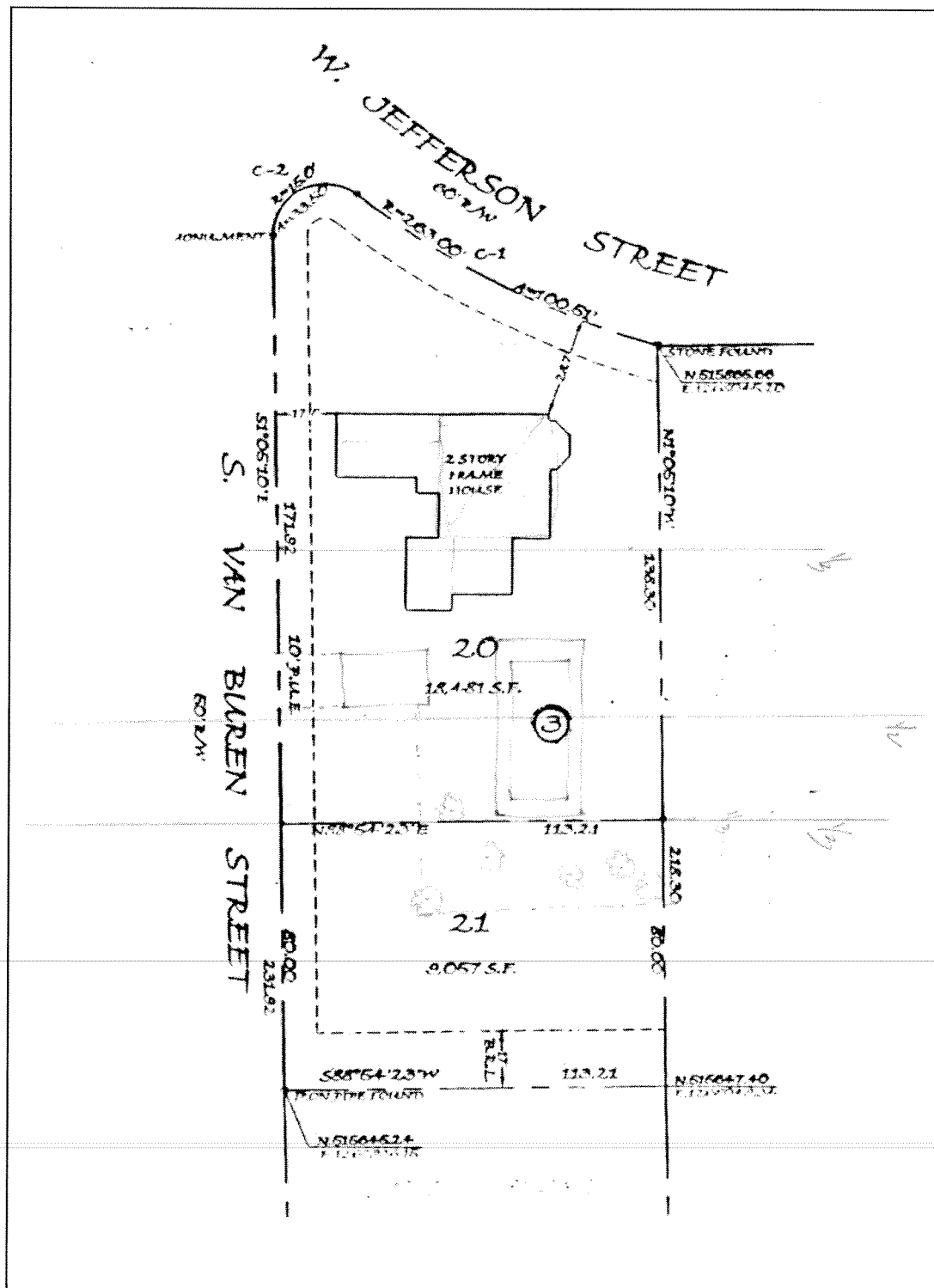
### **Secretary of the Interior's Standards for Rehabilitation**

---

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.



## Resubdivision alternatives





City of  
**Rockville**  
Get Into It

## **Planning Commission Staff Report Final Record Plat Application PLT2012-00517**

**MEETING DATE:** May 23, 2012

**REPORT DATE:** May 16, 2012

**FROM:** Margaret M. Hall, Planner II  
Planning Division  
240.314.8226  
mhall@rockvillemd.gov

**APPLICATION DESCRIPTION:** Final Record Plat,  
for the subdivision of a  
deeded lot into 2 record  
lots. The property is made up  
27,538 square feet of land.

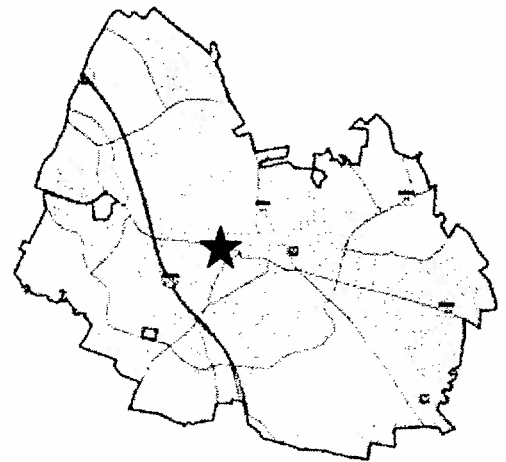
**PROPERTY LOCATION:** 104 West Jefferson Street

**APPLICANT:** James G. and Michael K. Fegan  
104 West Jefferson Street  
Rockville, Maryland 20850

**FILING DATE:** April 18, 2012

**RECOMMENDATION:** Approval, subject to the conditions noted on page 8 of the Staff Report.

**REQUEST:** The applicant proposes to divide the deeded lot into two record lots, proposed as Lots 20 and 21, Block 3, in the Original Town of Rockville subdivision. One is proposed to contain 18,482 square feet of land and have more than 180 feet of frontage on South Van Buren Street. The other is proposed to contain 9,057 square feet and includes 80 feet of frontage on South Van Buren Street.



**PROJECT/SITE INFORMATION:**

**Location:** 104 West Jefferson Street  
**Land Use Designation:** Detached Residential (Medium Density, 2.5 to 4 Units Per Acre)  
**Zoning District:** R-90 HD, Single Unit Detached Dwelling Restricted Residential, Historic District  
**Plat Area:** Property Total - 27,538 Square Feet or 0.63220 Acres  
Lot 20 – 18,481 Square Feet  
Lot 21 – 9,057 Square Feet  
**Current Use:** Single Unit Detached Residential  
**Proposed Use:** Single Unit Detached Residential

Surrounding Land Use and Zoning			
Location	Zoning	Planned Land Use	Existing Use
North	R-90 HD, Single Unit Detached Dwelling Restricted Residential, Historic District	Detached Residential (Medium Density, 2.5 to 4 Units Per Acre)	Single-Unit Detached Residential
South	R-90, Single Unit Detached Dwelling Restricted Residential, Historic District	Detached Residential (Medium Density, 2.5 to 4 Units Per Acre)	Single-Unit Detached Residential
East	R-90 HD, Single Unit Detached Dwelling Restricted Residential, Historic District	Detached Residential (Medium Density, 2.5 to 4 Units Per Acre)	Single-Unit Detached Residential
West	R-90 HD, Single Unit Detached Dwelling Restricted Residential	Detached Residential (Medium Density, 2.5 to 4 Units Per Acre)	Single-Unit Detached Residential

**PREVIOUS RELATED ACTIONS:**

- September 15, 1998 - Final Record Plat Application PLT1998-00150 was submitted to subdivide the property into two record lots.
- October 15, 1998 - Final Record Plat Application PLT1998-00150 was denied by the Planning Commission when the proposal failed to gain a majority vote. The applicant appealed the denial to the Circuit Court.
- November 24, 1998 - Final Record Plat Application PLT1998-00154 was submitted to subdivide the property into two record lots.
- December 23, 1998 - The Planning Commission determined that Final Record Plat Application PLT1998-00154 was not substantially different from PLT1998-00150 and the application was denied.
- August 20, 1999 - The Circuit Court consolidated the appeals and reversed the Planning Commission's decision, sending it back to the Commission to make findings.
- October 27, 1999 - The Planning Commission approved the application, with findings, as directed by the court.

## **ANALYSIS:**

### **Project Proposal**

The applicant is requesting approval of a Final Record Plat in order to subdivide/resubdivide the property into two record lots. The property consists of an R-90 HD lot that is improved with a historic home known as the Prettyman house. The house sits close to West Jefferson Street and has a deep rear yard that stretches along South Van Buren Street. The new 9,057 square foot lot is proposed at the rear of the property, fronting on South Van Buren Street. That will leave 18,481 square feet of land of the original 27,538 square foot lot to frame the historic Prettyman house.

### **Property Description and Background**

The property is located on the southeast corner of West Jefferson Street and South Van Buren Street. The deeded lot is made up of 27,538 square feet of land and is currently zoned R-90 HD (Single Unit Detached Dwelling Restricted Residential, Historic District).

**OWNER'S CERTIFICATION**  
The undersigned, owners of the property shown herein, hereby adopt this plan of subdivision, and establish the minimum building restriction lines, the proposed easements, all property, area, pipes and monuments will be set out finished grade in accordance with Division 4, Section 25-72 of the Rockville City Code. There are no recorded suits, actions of law, leases, liens, mortgages or trusts affecting the property included in this plat of subdivision except here a certain trust and the party in interest there to has been indicated hereon.

WITNESS	DATE	ADDRESS	SIGNATURE
WITNESS	DATE	ADDRESS	MICHAEL K. MADDOX

**Cardinal Bank**  
Their consent to this plan of subdivision.

WITNESS	DATE	ADDRESS	SIGNATURE
WITNESS	DATE	ADDRESS	

**SURVEYOR'S CERTIFICATION**  
I, the undersigned, certify that the plan shown herein is correct and that it is a subdivision of the land described in deed from James A. Taylor, Jr. and Michael K. Taylor, his wife, to Michael K. Taylor, James A. Taylor, Jr., Trustees of their Successors in trust under the Michael K. Taylor Living Trust, said deed dated August 2, 2002, and recorded in Liber 1897 at 140-13 among the land records of Montgomery County, Maryland. I further certify that, once completed as described in the owner's certification herein, all monuments shown thus 6 and iron pipes shown thus 6 will be set in accordance with Division 4, Section 25-72 of the Rockville City Code. Total area included on this plat is 27,538 square feet or 0.6322 acres of land. There is no indication to the public use.

THOMAS A. MADDOX - Professional Land Surveyor  
Maryland Registration #18882 - Expires 4/30/14

**PLAT TOTALS**

NUMBER OF LOTS	7
AREA OF LOTS AND QUOTS	27,538.2
TOTAL AREA SHOWN ON PLAT	27,538.2

**FOR PUBLIC WATER AND SEWER SYSTEMS ONLY**  
THE CITY OF ROCKVILLE PLANNING COMMISSION  
ROCKVILLE, MARYLAND

APPROVED \_\_\_\_\_  
WITHOUT COMMENT TO THE INSTALLATION OF WATER, SEWER AND STREETS

CHAIR \_\_\_\_\_ CITY MANAGER \_\_\_\_\_

RECORDED \_\_\_\_\_  
PLAT NO. \_\_\_\_\_

**PLAT OF SUBDIVISION**  
**LOTS 20 & 21 BLOCK 3**  
**ORIGINAL TOWN OF**  
**ROCKVILLE**  
CITY OF ROCKVILLE  
ELECTION DISTRICT 4  
MONTGOMERY COUNTY, MARYLAND  
SCALE 1" = 30' APRIL 12, 2012

**THOMAS A. MADDOX**  
PROFESSIONAL LAND SURVEYOR  
6033 SHADY GROVE COURT  
GATHERSBURG, MARYLAND 20877  
(301) 984-5804

**VICINITY MAP**  
SCALE 1" = 2000'

9

## Master Plan Recommendation

The property is governed by the 1989 West End – Woodley Gardens East/West Neighborhood Plan and the 2002 Comprehensive Master Plan.

The Planning Issues section of the 1989 West End – Woodley Gardens East/West Neighborhood Plan notes that “older housing built in the 19<sup>th</sup> century needs careful maintenance that is often quite expensive.” A Plan goal for the preservation of established neighborhoods states that “established neighborhoods will be maintained in their predominant residential character and protected from intrusion of unwarranted traffic and blighting influences of commercial, industrial, and incompatible non-residential development.”

One of the Critical Issues identified in the 2002 Comprehensive Master Plan for the West End and Woodley Gardens East-West Neighborhoods was infill development. Infill lots were mostly determined to be of limited availability and resubdivision of the typical narrow but deep West End lots was not seen as practical because they could not singly accommodate resubdivision due to their narrow width. Resubdivision of these lots has been further limited by the prohibition of pipestem lots. Several locations like the Chestnut Lodge and Buckingham properties were specifically noted as properties where residential redevelopment was possible as well as likely. A few other properties were identified for infill development but there is no specific mention of this property.

## Prior Action

The proposed subdivision has been reviewed several times and acted on three times by the Planning Commission. Attachments 4 through 10 (the Staff Reports, denial letters, Circuit Court Opinion and Order and approval letter) represent the activities and recommendations made approximately 14 years ago with the exact same subdivision proposal. Planning staff consistently recommended approval but the Commission denied the application. The denial was appealed to the Circuit Court for Montgomery County, Maryland where the decision was reversed and remanded back to the Planning Commission to make findings addressing the feasibility of the proposed subdivision. Attachment 10-1 is the letter reflecting the Planning Commission's approval on October 27, 1999. It is also a clear and concise synopsis of the progression of the process and the approval of the subdivision. That, combined with the Opinion and Order issued by the Circuit Court (Attachment 8-1), gives very clear insight into the actions that were taken in the past with respect to the proposed Final Record Plat.

## Zoning Compliance

The application proposes to subdivide the property into two record lots. In evaluating the Final Record Plat, the following represents the minimum requirements for the lot being created.

- In the R-90 Zone, lots must contain a minimum of 9,000 square feet of land and be a minimum of 80 feet wide.

- Resubdivision of Existing Lots – In any resubdivision of developed or undeveloped lots within an existing residential area, the plat must maintain, to the extent feasible, the average area and frontage of existing lots within 500 feet of the proposed resubdivision. This requirement supersedes the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots is smaller than the minimum requirements of the zone, in which case the minimum requirements of the zone apply.

In determining the amount of review necessary for this plat, the following was considered.

- Subdivision is “the division of a lot, tract, or parcel of land into two (2) or more lots, plats, site, or other division of land or assemblage of land for the purpose, whether immediate or future, of sale or of building development. ‘Subdivision’ includes resubdivision and, when appropriate to the context, relates to the process of resubdividing.
- A Final Record Plat is “a map that illustrates a metes and bounds description of the property into a system of lot and block numbering, the naming of the tract (subdivision name), and the assignment of a plat number when recorded among the Land Records of Montgomery County, Maryland. Further, the subdivision may also refer to the land or territory subdivided.”

Since the proposed land division does not represent anything different than what was proposed approximately 14 years ago, the issue is whether the circumstances that led to an approval recommendation by staff and the eventual Planning Commission decision have changed. Staff was unable to find an approved subdivision within 500 feet of the application during the intervening years, so the average area and frontage of properties within 500 feet should not have changed. The frontage of the smaller lot, at 80 feet in width, meets the average width of between 80 and 84 feet based on the two differing assessments conducted during review of the prior applications. The average lot size was also determined to be 12,300 by the surveyor but 14,430 square feet was determine to be a better representation of the perceived lot width based on the individual property sizes rather than the individual lot sizes. The minimum lot width is still 80 feet and the minimum lot size is 9,000.

In approving the prior application, the Planning Commission made three findings. They are included in Attachment 10-1 but are retyped below.

1. That, with respect to the requirements of Section 749(b) (now Section 25.21.22.b) the proposed smaller lot does not meet the standard of the average area and frontage of existing lots within 500 feet of the proposed subdivision, but that the historic nature of the existing house warrants application of the discretion that Section 25-749(b) gives the Planning Commission.

2. That the subdivision proposal maintains, to the extent feasible, the area and frontage requirements of Section 25-749(b) in light of the historic nature of the structures on the applicant's lot.
3. The Commission adopted the staff's findings contained in its December 11, 1998 Staff Report that the proposed subdivision satisfied the required finding contained in Section 25-727. Those findings are attached and include the findings that the proposed subdivision is not detrimental to the public welfare or injurious to property or improvements in the neighborhood.

In approving the plat, the Commission imposed the same conditions that are currently being recommended. The one thing that has changed with respect to application processing is that there are no findings that must be made with respect to the approval of a Minor Subdivision of three or fewer lots. Therefore, finding three no longer applies. Findings must be made at the Preliminary Subdivision stage for subdivisions that contain four or more lots or for subdivisions that require the extension of public facilities.

The applicant must comply with the Forest and Tree Preservation Ordinance and a condition has been included with the recordation of the plat to accomplish the requirement.

### **Adequate Public Facilities Ordinance**

The application is subject to the requirements of the Adequate Public Facilities Ordinance, adopted in 2005. Section II.C of the Adequate Public Facilities Standards (APFS) allows the Planning Commission to grant a waiver from the provisions for certain uses that have been predetermined to have little or no impact on public facilities.

Minor subdivisions are included in the APFS as one of those classes of uses that are deemed to have little or no impact on public facilities. If the Commission finds that the development will result in minimal adverse impact, they may grant a waiver from the full compliance with the APFO provisions. Four specific areas of analysis must be looked it for compliance with the APFO. They are transportation, schools, fire and emergency, and sewer and water capacity. A transportation capacity analysis is not required for minor subdivisions because the impact is so small. The property's close proximity to the Hungerford Fire Station means there is reduced response time for both fire and emergency services but, as noted in the Adequate Public Facilities Standards (APFS), "first response to any location in Rockville is possible within established response time goals." A single unit detached home is not listed among the high-risk uses where there needs to be the capability of a full response from 3 stations within 10 minutes. The high-risk uses are listed as schools, hospitals, nursing homes, commercial buildings over 3 stories tall with no sprinklers and places of assembly seating more than 500 people. Consultation with the Department of Public Works staff indicates that there are no capacity issues related to the water and sewer service in the area. These three classes of uses have adequate capacity and will have little or no impact on public facilities and no mitigation will be required.

The remaining level of service that must be evaluated is the schools capacity. This property is located in the Richard Montgomery High School cluster, where Beall Elementary School exceeds the 110 percent of the programmed capacity. To satisfy the schools test, all schools within the cluster must be below the 110 percent capacity level within 2 years. According to the student generation chart included in the APFS, a single family home generates 0.710 students. Small development proposals, like a Minor Subdivision, had been looked at when the APFO and the APFS were implemented to be of little or no impact and eligible for a waiver. The consideration is based on the idea that a single unit home generates less than one student. Fluctuations in student enrollment caused by something as small as the relocation of a single family could offset the projected student enrollment that may or may not be generated by the creation of one residential lot. Staff therefore finds that the application meets the traffic, sewer and water, and emergency services and that a waiver be granted for this Final Record Plat application for the school capacity.

### **Forest /Tree Preservation**

Compliance with the Forest and Tree Preservation Ordinance will need to be met. A combined Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) will need to be approved prior to the recordation of the plat. A Forest Conservation Plan will need to be approved prior to the release of a Building Permit.

### **Recommended Conditions**

1. That the Plat be revised to make modifications/additions, as identified by Planning Commission or staff.
2. That an NRI/FSD be submitted to the City Forester for approval prior to the recordation of the plat.
3. That the Final Record Plat be submitted in an appropriate electronic format as specified in Section 25.21.10.d of the City of Rockville Zoning Ordinance.

### **Required Findings**

There are no findings that must be made for subdivision proposals for Final Record Plats. Findings are required for applications under review for Preliminary Subdivision Plans but not for Final Record Plats that include minor subdivisions or plats that reflect lots approved at the Preliminary Subdivision Plan stage. The proposed Final Record Plat meets zoning requirements.

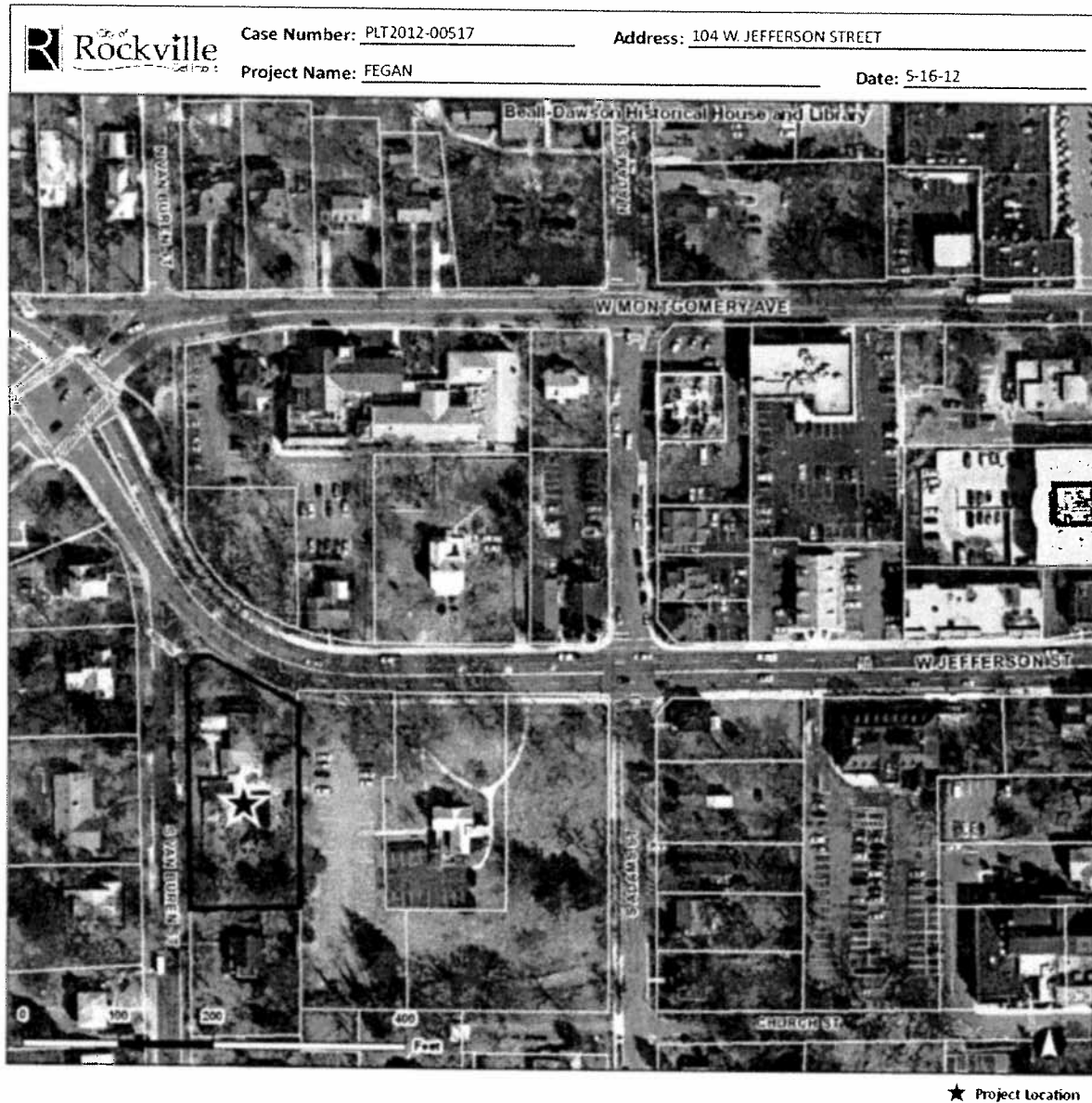
**NOTIFICATION:**

Public Notification of the Final Record Plat was made pursuant to the requirements of Section 25.21.11.d ("Notice"). Mailed notification was provided to 279 residents and property owners within the required 750-foot radius. Additionally, mailed notification was made to the West End Citizens Association. No posting of signs on the property is required. At the time of report preparation (May 16, 2012), one letter and two petitions have been submitted.

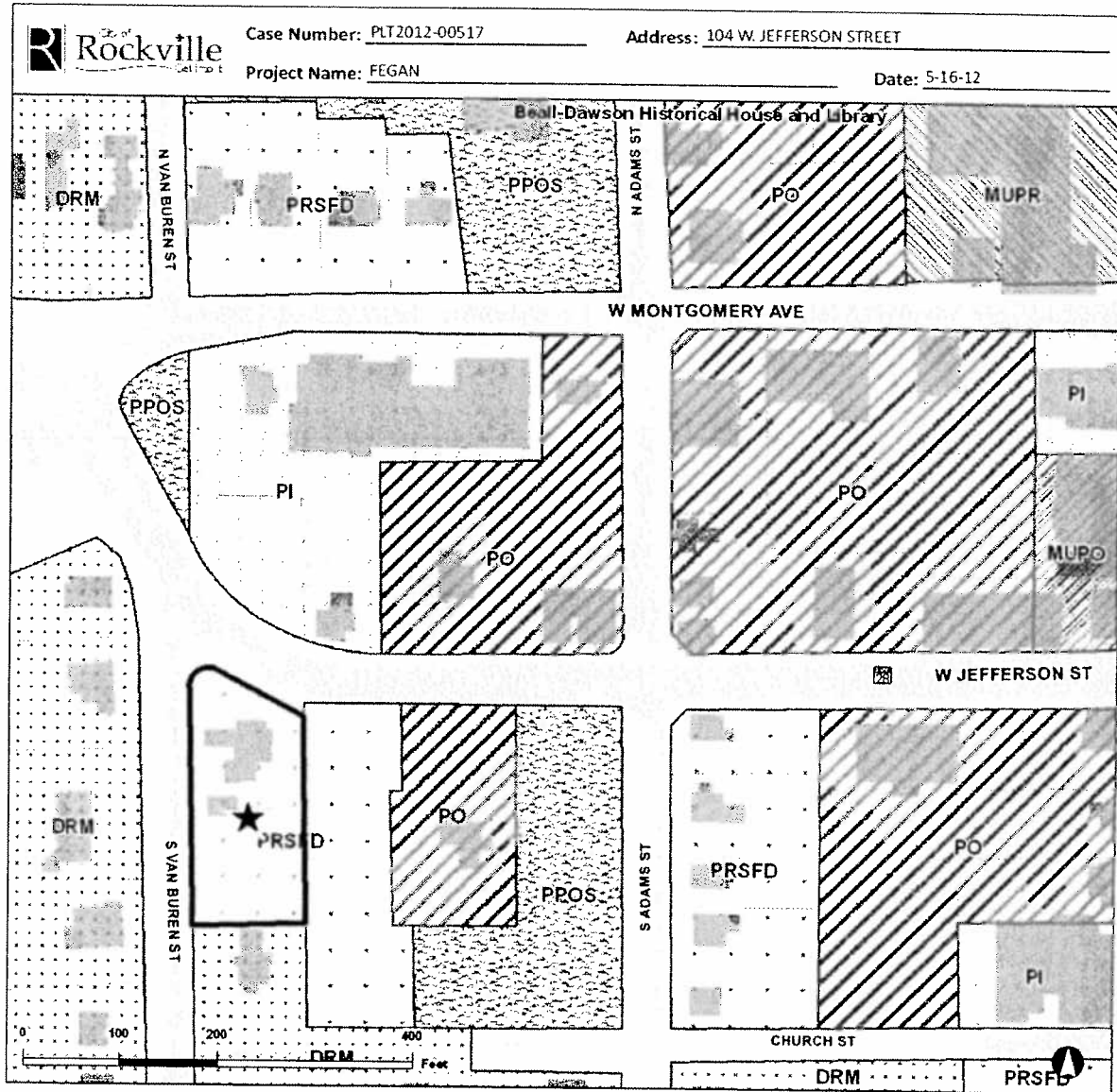
**ATTACHMENTS:**

Attachment 1-1	Aerial Map
Attachment 2-1	Land Use Map
Attachment 3-1	Zoning Map
Attachment 4-1	Staff Report for PLT1998-00150
Attachment 5-1	Denial letter for PLT1998-00150
Attachment 6-1	Staff Report for PLT1998-00154
Attachment 7-1	Planning Commission Decision for PLT1998-00154
Attachment 8-1	Circuit Court record and Opinion and Order
Attachment 9-1	Memo to Planning Commission regarding Circuit Court remand
Attachment 10-1	Approval Letter for PLT1998-00150 and PLT1998-00154
Attachment 11-1	Neighborhood response to the Application

# Attachment 1: Aerial



## Attachment 2: Planned Land Use Map

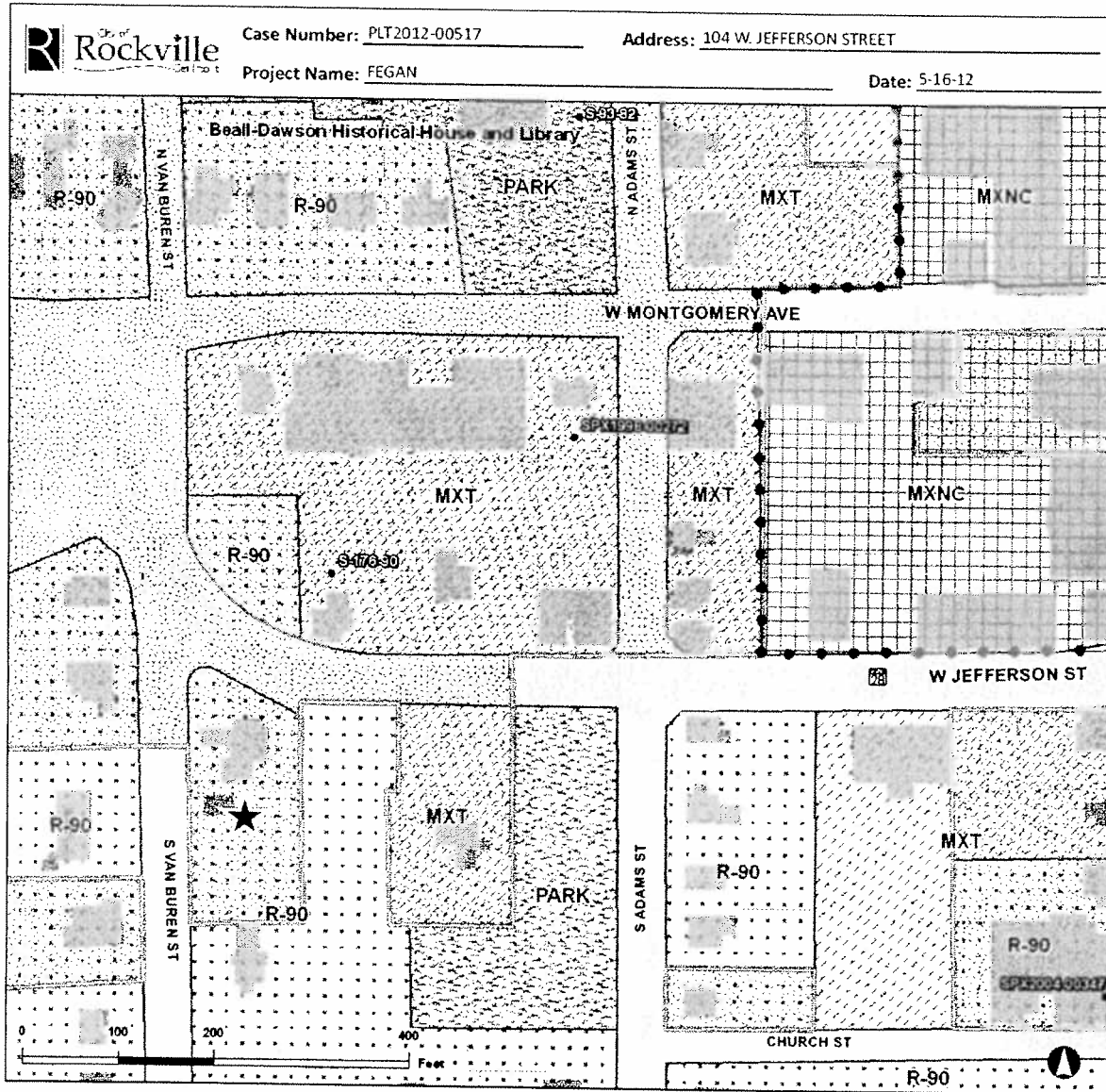


### Legend

- |   |   |  |
|---|---|--|
| DRL - Detached Residential (Low Density - Less than 2.5 units per acre) | PRSFA - Preferred Residential - Single-family Attached          | PBF - Public Buildings and Facilities                  |
| DRM - Detached Residential (Medium Density - 2.5 to 4 units per acre)   | PRSFD - Preferred Residential - Single-family Attached/Detached | PI - Public and Institutional                          |
| DRH - Detached Residential (High Density - Over 4 units per acre)       | PRMF - Preferred Residential - Multi-Family                     | I - Institutional                                      |
| AR - Attached Residential   | PC - Preferred Commercial                                       | PRCA - Private Recreational and Conservation Area      |
| GA - Garden Apartments  | POLW - Preferred Office/Live Work Space                         | POS - Private Open Space                               |
| HRA - High Rise Apartments  | PO - Preferred Office   | PPOS - Public Park and Open Space                      |
| NC - Neighborhood Commercial  | MUPO - Mixed Use Preferred Office                               | CDP - Comprehensive Planned Development                |
| GC - General Commercial   | MUPR - Mixed Use Preferred Residential                          | RPR - Rockville Pike Residential                       |
| EC - Entertainment Corridor   | MR - Mixed Residential  | RPCMUD - Rockville Pike Corridor Mixed Use Development |
| SI - Service Industrial   | MUC - Mixed Use Commercial                                      | RRW - Rail Right of Way                                |
| RIOP - Restricted Industrial/Office Park                                | MUD - Mixed Use Development                                     |  |
| PRSFD - Preferred Residential - Single-family Detached                  | MUI - Mixed Use Industrial                                      |  |

★ Project Location

# Attachment 3: Zoning Map



## Legend

R-400 - Residential Estate	RMD-10 - Residential Medium Density	MXC - Mixed-Use Commercial
R-200 - Suburban Residential	RMD-15 - Residential Medium Density	MXCD - Mixed-Use Corridor District
R-150 - Low Density Residential	RMD-25 - Residential Medium Density	MXE - Mixed-Use Employment
R-90 - Single Unit Detached Dwelling, Restricted Residential	PD - Planned Development	MXNC - Mixed-Use Neighborhood Commercial
R-75 - Single Unit Detached Dwelling, Residential	IL - Light Industrial	MXT - Mixed-Use Transition
R-60 - Single Unit Detached Dwelling, Residential	PARK - Park Zone	MXTD - Mixed-Use Transit District
R-40 - Single Unit Semi-detached Dwelling, Residential	MXB - Mixed-Use Business	Special Exceptions
Clusters	Historic Preservation Parcels	Twinbrook Metro Performance District
Planned Developments	Lincoln Park Conservation Overlay	Town Center Performance District

**CITY OF ROCKVILLE PLANNING DIVISION  
STAFF REPORT AND RECOMMENDATION**

October 16, 1998

**FINAL RECORD PLAT:** PLT98-0150  
Lots 20 & 21, Block 3  
Original Town of Rockville

**APPLICANT:** John R. Law  
104 W. Jefferson Street  
Rockville, Maryland 20850

**DATE FILED:** September 15, 1998

**DESCRIPTION OF PROPERTY:**

**Lot Size and Zone:** 27,535 square foot lot zoned R-90  
**Present Use:** Residential

**Comments:** The property is located within the West Montgomery Avenue Historic District and is a previously unrecorded, deeded lot.



**REQUEST:** Approval of a record plat to divide the property into two lots.

**STAFF COMMENTS:** The applicant is proposing to divide the existing deeded lot into two lots, one to contain the existing improvements and the other to create a lot for a new infill dwelling. The City Forester has advised that a Forest Stand Delineation is not required at this time, but will be required prior to construction of a new dwelling unit. Stormwater management must be provided for the entire property prior to construction of a new dwelling unit on Lot 21.

The original Johnston-Prettyman house was built between 1841 and 1842. The property is located within the West Montgomery Avenue Historic District; therefore, the Historic District Commission was required to review the proposal. The Historic District Commission recommended approval of the subdivision. The Commissioners concurred that the subdivision would have no adverse impact on the Prettyman House and any future construction should be compatible with the existing house and streetscape in siting, setback, mass, and materials. One Commissioner expressed concern about continuing subdivision of original large lots.

Planning staff has received a letter from a neighboring property owner expressing concern about the size of the lots that will be created upon subdivision. The Subdivision Regulations state that:

Section 25-749. Lots. In any resubdivision of developed or undeveloped lots within an existing residential area, the Commission shall maintain, to the extent feasible, the average area and frontage of existing lots within 500 feet of the proposed resubdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots are smaller than the

RECORD DOCUMENT No. 10

**Attachment 4-1**

R. 22

18

area and frontage of existing lots within 500 feet of the proposed resubdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots are smaller than the minimum requirements of the zone, in which case the minimum requirements shall apply.

The applicant has asserted that this section does not apply to the current application because it is not a resubdivision of an existing platted lot but is a subdivision of an old lot that was created by deed. Staff believes that this may technically be a correct assertion. However, staff further believes that, in making meeting the required findings for plat approval, the Planning Commission has the authority to consider whether the proposed lots are compatible with the surrounding neighborhood and consistent with the intent of the above referenced section.

Staff has not had the opportunity to analyze in any detail the relationship of the newly created lots to the frontage and area lots within 500 feet of the subject property. This information was requested from the applicant on the day that the brief book was prepared, but it could not be provided at that time.

It is the sense of the staff, however, that the neighborhood is an eclectic mixture of lots with a range of shapes and sizes. When Section 25-749 was drafted, it was in response to creation of a pipestem lot in the Historic District. Approval of the current request would create a lot with frontage equal to many of homes on the street but with area smaller than most. Based on the information we currently have, however, the new lot would not be extremely variant from some of the lot frontages and sizes in the area, and certainly not as variant as a pipestem lot would be.

**STAFF RECOMMENDATION:** Staff recommends approval of the application unless further analysis of the information regarding the lots within the area within 500 feet of the proposed subdivision shows a serious deviation from the neighborhood's existing lot frontages and sizes. If the information is submitted by the applicant, and upon analysis, the Planning Commission determines that the subdivision would not maintain, to the extent feasible, the average area and frontage of existing lots, denial or modification of the proposal may be appropriate. If the Commission does not feel comfortable with analyzing the data presented at the meeting, it may wish to defer action on this application until such analysis can be completed.

Should the Planning Commission recommend approval of the application, staff recommends that the approval be subject to the conditions noted below:

1. That the plat be revised to make modifications/additions as identified Planning Commission Exhibit "A", and
2. That the final corrected plat be submitted in an appropriate electronic format as specified in Section 25-782 (c), (d), and (e) of the Rockville Planning and Zoning Ordinance.

Attachments



City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20850-2364

Community Planning and  
Development Services  
(301) 309-3200  
TDD (301) 309-3187  
FAX (301) 762-7153

Inspection Services  
(301) 309-3250

Planning Division  
(301) 309-3200

Landlord Tenant  
(301) 309-3200

Neighborhood Resources  
(301) 309-3200

September 23, 1998

Chair Jane Fry-Emond  
City of Rockville Planning Commission  
111 Maryland Avenue  
Rockville, MD 20850

Dear Ms. Fry-Emond and Members of the Planning Commission:

At the Historic District Commission meeting of September 15, 1998, the Commission reviewed the proposed subdivision of the original town of Rockville lot at 104 Jefferson Street requested by Dr. John Law. Although not unanimously, the HDC found the subdivision would not adversely impact the historic property or the streetscape. It had some recommendations for the building to be constructed on the new lot, as it will remain under the jurisdiction of the HDC. The minutes of the courtesy review and recommendation are attached.

Sincerely,

Judith A. Christensen  
HDC Staff Liaison

Attachment: Draft HDC Minutes 9-98

Cc: Kathleen Mitchell, Director, CPDS  
Bob Spalding, Chief of Planning  
Lisa Rother, CPDS Specialist  
HDC

MAYOR  
Rose G. Krasnow

COUNCIL  
Robert E. Dorsey  
Glenon J. Harrison  
James T. Marcinian  
Robert J. Wright

CITY MANAGER  
W. Mark Deitz

CITY CLERK  
Paula S. Lovel

CITY ATTORNEY  
Paul T. Hines

Attachment 4-3 it 1

Commissioner Brenneman moved, seconded by Commissioner Moloney, to recommend approval of HDC98-0128, an amendment to the Beall Dawson Master Plan as presented on September 15, 1998, for installation of a brick walkway and stone retaining wall with the following conditions:

1. Final construction details should come back to the HDC when work is ready to proceed.
2. The City fund a preliminary archeological survey in the area to be disturbed, if necessary.
3. If archeology is not completed in the area to be disturbed, the project will be delayed until the survey is completed.

VOTE: 5-0

B.

Applicant: Dr. John Law  
104 W. Jefferson Street  
R-90 lot subdivision

RECOMMENDATION TO PLANNING COMMISSION

Staff said the subdivision application was filed on September 15, 1998, and Dr. Law was present to explain the sketch plan included in the brief book. As there is no application before it, the HDC will make a recommendation to the Planning Commission regarding the subdivision and any potential structures built on the site. Staff entered a letter into the record from Frances Parks stating she is a neighbor and has no objection to the subdivision.

Dr. Law explained that the portion to be subdivided at the rear portion of the larger lot was fenced off from the house and was used for trees and shrubs. The prospective purchaser was John DuFief, a local builder who would be sympathetic to the site. Mr. DuFief had already requested guidance on building on the potential lot from City staff. Dr. Law observed that the rear lot would become part of the Van Buren Avenue streetscape and the view of the Prettyman House and lot from Jefferson would not change.

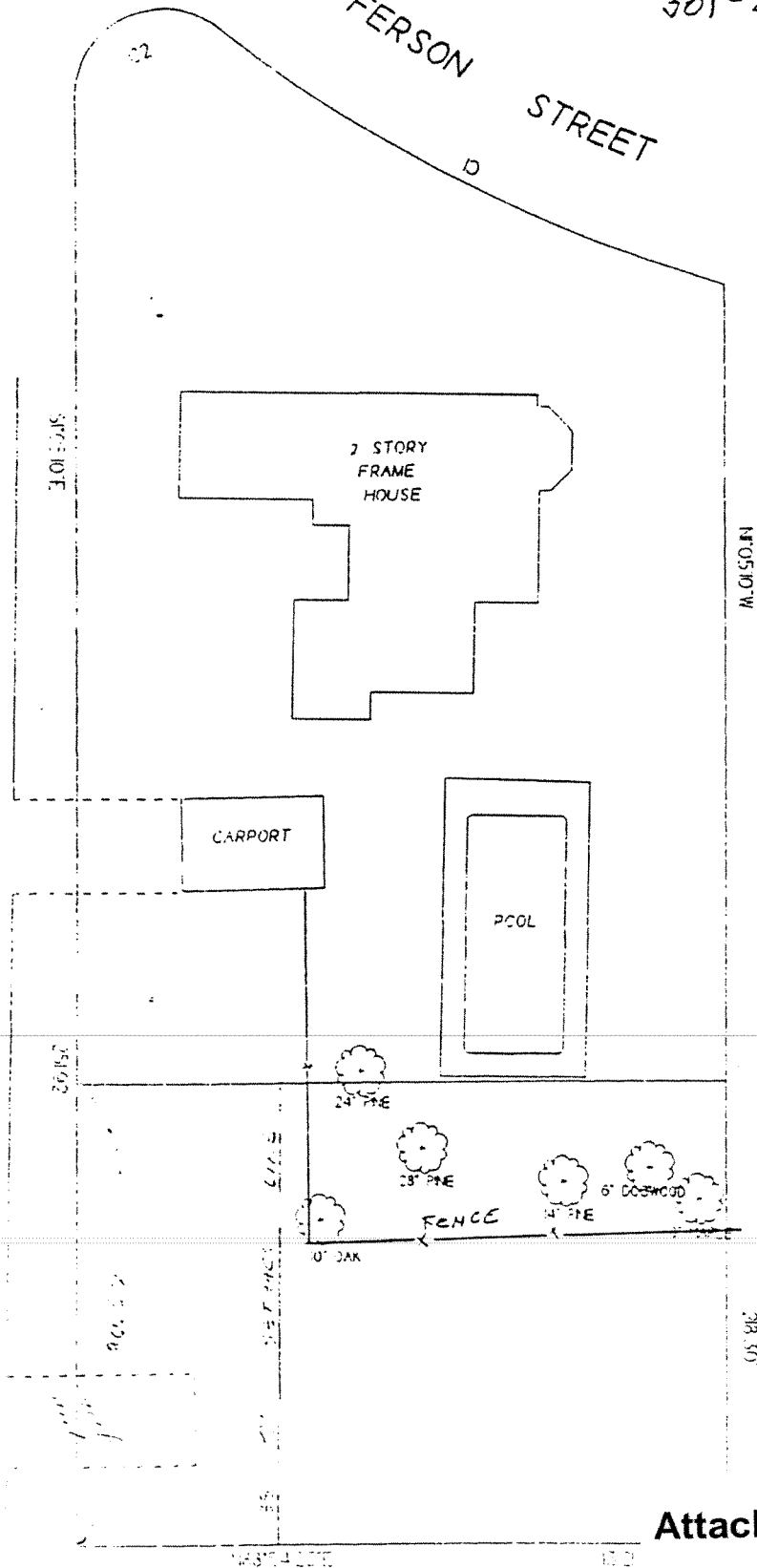
Commissioners Brenneman, Moloney, Crawford and Neal Powell concurred that the subdivision would have no adverse impact on the Prettyman House and any future construction should be compatible in siting, setback, mass, and materials with the established streetscape and historic house. It was noted that the new lot was not incompatible with the lot size and land use along Van Buren and any construction on it would require an HDC certificate of approval. Commissioner Noble concurred on the specifications for new construction, but stated that he believed that subdivision of original large lots over time would change Rockville's historic character of a country town with large house lots suitable for gardens and animals to an urban environment. The recommendation passed.

1" = 30'

104 JEFFERSON STREET

J.R. LAW Property  
501-279-0990  
301-881-2646

100 S. VAN BUREN STREET



Attachment 4-5

R. 26

22



## RICHARD J. GREEN, D.D.S., M.S.D.

Democracy Medical Center  
6300 Democracy Boulevard  
Bethesda, Maryland 20817

PRACTICE LIMITED TO PERIODONTICS

(301) 530-6902

October 15, 1998

Margaret M. Hall  
Planner I  
Department of Community Development  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850-2364

10-16-98		Post-It™ brand fax transmittal memo 7871		# of pages = 1
To	MARGARET HALL	From	RICHARD GREEN	
Co.	CITY OF ROCKVILLE	Co.		
Dept.	COMMUNITY DEVELOPMENT	Phone #	301 530 6902	
Fax #	301 762 7153	Fax #		

Re: Planning Division application PLT98-0150

Dear Ms. Hall:

I am objecting to the proposed subdivision of the 27,535 square foot parcel owned by applicant John R. Law creating a 9,056 building lot at 100 S. Van Buren Street. I am a property owner at 124 S. Van Buren Street and my property is within 500 feet of the proposed subdivision.

The Zoning and Planning Code Sec. 25-749 (b), states:

*In any resubdivision of developed or undeveloped lots within an existing residential area, the Commission shall maintain, to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed resubdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone...*

I allege that the 9,056 square foot subdivision is below the average area of existing lots within five hundred (500) feet of the proposed resubdivision. Approval of this application should be withheld pending submission of further supporting documentation indicating the 9,056 square foot lot to be equal to, or greater than the average size of existing lots in that area. This subdivision should be in conformance with all City of Rockville zoning and subdivision laws before approval.

Sincerely,



Richard J. Green, DDS, MSD

qg

REC-1

OCT 16

R. 28

Attachment 4-7 it 3

24



City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20850-2364

Community Planning and  
Development Services  
(301) 309-3200  
TDD (301) 309-3187  
FAX (301) 762-7153

Inspection Services  
(301) 309-3250

Planning Division  
(301) 309-3200

Landlord Tenant  
(301) 309-3200

Neighborhood Resources  
(301) 309-3200

November 6, 1998

Dr. John R. Law  
104 W. Jefferson Street  
Rockville, Maryland 20850

Dear Dr. Law:

Re: Final Record Plat PLT98-0150,  
Proposed Lots 20 & 21, Block 3, Original Town of Rockville

At its meeting of October 21, 1998, the City of Rockville Planning Commission reviewed the above referenced proposed Final Record Plat of subdivision. As the applicant, you had the burden of persuading a majority of the voting Commission members that the proposed plat of subdivision met all applicable requirements of the Rockville Zoning Ordinance, including but not limited to those contained in Sections 25-727, 25-728 and 25-749.

Following presentation from the staff and applicant, the Planning Commission heard from interested citizens in favor of the application and from citizens opposed to the application. After discussion of the merits of the application by the four members of the Planning Commission present at the meeting, a motion to approve the Final Record Plat failed by a vote of two members in favor and two members opposed.

A majority of the voting members of the Planning Commission were not persuaded that the proposed Record Plat satisfied all of the applicable requirements of the Zoning Ordinance. Under the Planning Commission's Rules of Procedure the failure of a motion to approve to receive a majority vote results in a denial of your application for Final Record Plat.

Your attorney, Nancy M. Floreen addressed a letter to the Chair of the Planning Commission on October 28, 1998 asking for reconsideration. That letter was forwarded to the Planning Commission on November 4, 1998 where no action for reconsideration was taken.

Sincerely,

Robert J. Spalding  
Chief of Planning

MAYOR  
Rose G. Krasnow

COUNCIL  
Robert E. Dorsey  
Glennon J. Harrison  
James T. Murrinan  
Robert J. Wright

CITY MANAGER  
W. Mark Pentz

CITY CLERK  
Paula S. Jewell

CITY ATTORNEY  
Paul T. Glasgow

Attachment 5-1

25

**CITY OF ROCKVILLE PLANNING DIVISION  
STAFF REPORT AND RECOMMENDATION**

December 11, 1998

**FINAL RECORD PLAT:** PLT98-0154  
Lots 20 & 21, Block 3  
Original Town of Rockville

**APPLICANT:** John R. Law  
104 W. Jefferson Street  
Rockville, Maryland 20850

**DATE FILED:** November 24, 1998

**DESCRIPTION OF PROPERTY:**

**Lot Size and Zone:** 27,535 square foot, zoned R-90

**Present Use:** Residential

**Comments:** The property is located within the West Montgomery Avenue Historic District and is a previously unrecorded, deeded lot.



**REQUEST:** Approval of a record plat to divide the property into two lots.

**PREVIOUS RELATED ACTIONS:**

- On September 15, 1998, the Historic District Commission reviewed Final Record Plat Application PLT98-0150 and found that the subdivision would not adversely impact the historic structure nor the historic West Jefferson Street streetscape.
- The applicant filed Final Record Plat Application PLT98-0150 on September 15, 1998. At the Planning Commission meeting on October 21, 1998, a majority of the voting members of the Planning Commission were not persuaded that the proposed Record Plat satisfied all of the applicable requirements of the Zoning Ordinance and the application was denied with a 2-2 vote.
- The applicant has filed an appeal before the Circuit Court for Montgomery County. A consent motion to stay further action on that appeal pending the outcome of this application has been filed with the Court.

**STAFF COMMENTS:** The applicant has submitted a Final Record Plat request for a two lot subdivision that is substantially the same as the one that was denied by the Planning Commission in October. The proposal is to divide the existing deeded lot into two lots, one to contain the existing improvements and the other, smaller lot, for a new infill dwelling. The only difference between this application and the previous one is that the applicant now proposes to live on the

smaller lot instead of selling both lots. This change is not material and not relevant to the analysis of this application.

The original Johnston-Prettyman house was built between 1841 and 1842. The property is located within the West Montgomery Avenue Historic District; therefore, the Historic District Commission was required to review the proposal. The Historic District Commission previously found that the proposal would not adversely impact the historic structure nor the historic West Jefferson Street streetscape.

The City Forester has advised that a Forest Stand Delineation is not required at this time, but will be required prior to construction of a new dwelling unit. The Department of Public Works has indicated that stormwater management must be provided for the entire property prior to construction of a new dwelling unit on Lot 21.

The proposed lots comply with the minimum requirements contained in Section 25-311, Tables of Development Standards for lots zoned R-90, One-Family Detached, Restricted Residential. Those requirements are a minimum lot size of 9,000 square feet with frontage of at least 80 feet. The larger 18,479 square foot proposed lot has over a 100 feet of frontage on W. Jefferson Street and over a 170 feet of frontage on S. Van Buren Street while the smaller lot is made up of 9,056 square feet with 80 feet of frontage along S. Van Buren Street.

Citizens opposing this application have cited Section 25-749(b) as a provision of the Zoning Ordinance that should be applied to this subdivision application. Section 25-749(b) Resubdivision of existing lots states that:

In any resubdivision of developed or undeveloped lots within an existing residential area, the Commission shall maintain, to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed resubdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone, except where the average lot size of frontage of the existing lots are smaller than the minimum requirements of the zone, in which case the minimum requirements shall apply.

Whether this section applies to the proposed subdivision depends on whether the pending application involved is an initial subdivision or a resubdivision. There is no definition of "resubdivision" in the Zoning Ordinance. The Zoning Ordinance's definition of a subdivision is as follows:

Subdivision means the division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other divisions or assemblage of land for the purpose, whether immediate or future, of sale or of building development. "Subdivision" includes

resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or territory subdivided. (Section 25-1. Definitions.)

The applicant has asserted that Section 25-749(b) does not apply to the current application because it is not a resubdivision of an existing platted lot but rather is a subdivision of an old lot created by deed. Staff has had the opportunity to further evaluate whether a deeded lot constitutes a subdivision and believes that it does, particularly when, as in this case, the lot was established at a time when creation of a lot by deed was an acceptable method of land division. The language of Section 25-749(b) does not expressly limit its requirement to resubdivision of previously platted lots. Staff historically has applied Section 25-749(b) to evaluate the appropriateness of pipestem lots. In doing so, staff has made no distinction between subdivision of previously platted lots and subdivision of lots created by deed.

Since Section 25-749(b) applies to this application, information must be collected to determine an average of the lot frontages and lot area of the surrounding properties. Access to the tax records is the only reference source that staff can use to provide timely property information. The information in those records, however, is limited to overall property size and provides no information about the lot frontages. Staff compiled information from the tax records for each tax account within 500 feet of the proposed subdivision. Without determining whether the tax account contained more than one lot, the average tax parcel was determined to be 14,430 square feet.<sup>1</sup> Additionally, non-residentially occupied properties were excluded from the calculations because they are not the same use and are, more often than not, made up of multiple lots.

Similarly, staff cannot determine the average frontage of the lots in the area without accessing the deeds for the unplatted lots. Staff, however, used the 200 scale tax maps to assess the tax parcel frontages within the 500 radius of the proposed subdivision and found that a majority of the lot frontages are equal to or less than the 80 feet of frontage proposed for the smaller lot and that the proposed larger lot exceeds most of them.

The area of the two proposed lots is 18,479 square feet and 9,056 square feet. The applicant could create two lots of approximately 13,767 square feet each by moving the dividing lot line to a point where it divides the existing property in half by square footage. The applicant is opposed to that idea because it would mean that the pool and carport would be lost. Staff, however, is opposed to that idea for a different reason. Moving the lot line would only achieve lots of equal size; it would not produce fewer lots. Moreover, dividing the property in half does not produce a subdivision that takes into account the existing historic house. The proposed subdivision achieves

---

<sup>1</sup>Use of this method tends to skew the average lot size data because it does not illustrate the average area of existing lots but shows the average area per tax account. Without a detailed search of each tax account among the Land Records of Montgomery County, there is no other method available to determine an average. Since some accounts contain more than one lot, this method also produces an average higher than would be determined for individual lots.

a greater degree of sensitivity than just cutting the property in half and produces the same number of lots. The intent of Section 25-749(b) is to protect existing neighborhoods from uncharacteristic subdivision. In this case, the uneven division of the property seems to be in character with the eclectic character of the neighborhood, which consists of a variety of lot sizes.

While a preliminary plan is not required for three lots or less, the preliminary plan findings contained in Section 25-727 must be addressed. In order to approve a record plat, the Planning Commission must find that a proposed subdivision will not conflict with any of the findings. The following is a list of the findings as well as an evaluation of each:

**(1) Constitute a violation of any provision of this chapter or other applicable law;**

The proposed lots meet the minimum requirements for the R-90 zone. The intent of Section 25-749(b) is to create lots that are compatible with the surrounding neighborhood. Within 500 feet of the proposed subdivision are properties that are smaller as well as larger than the proposed lots. They are also intermingled with each other. In this case, unequally dividing the existing lot creates one lot that complies with the Development Standards of the R-90 zone and another that not only exceeds the average for the neighborhood but creates a lot that is sensitive to the historic house. The proposed subdivision is also different from the others along South Van Buren Street because it abuts a non-residential use. For these reasons, staff believes that the proposed subdivision does not violate any provision of this chapter or other applicable law.

**(2) Violate or adversely affect the Plan;**

The Master Plan recommends medium density detached residential development with 2.5 to 4 units per acre for this area. The proposed lots are zoned R-90, One-Family Detached, Restricted Residential and meet the development standards for that zone. The proposed subdivision will not violate or adversely affect the Plan or the Zoning Ordinance.

**(3) Overburden existing public services, including but not limited to water, sanitary sewer, public roads, storm drainage and other public improvements;**

The Department of Public Works has not identified any difficulty with the ability to provide water or sanitary sewer to the proposed subdivision. The proposed subdivision would only add one house to South Van Buren Street. Adequate sewer, water and storm drain capacity is available to serve an additional single-family dwelling. The proposal is not large enough to produce any identifiable impact upon the public street system or other public improvements.

**(4) Affect adversely the health or safety of persons residing or working in the subdivision or neighborhood;**

The proposed subdivision is located in a single-family neighborhood. A new single-family home is planned for the smaller lot. There are no health or safety concerns associated with this proposal that would be any different than any other home on the street.

**(5) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;**

The public welfare is unaffected by this proposal. Staff cannot identify any way that this subdivision would be injurious to property or improvements in the neighborhood. Neighbors have suggested that allowing this subdivision could create a precedence for subdivision within the neighborhood that would lead to its deterioration. Although this may be a valid concern, the proposed subdivision satisfies the development standards set forth in the Zoning Ordinance and poses no current identifiable harm or danger to the neighborhood.

**(6) Be unsuitable for the type of development, the use contemplated, and available public utilities and services; or**

This proposal is for a single-family home in a single-family residential neighborhood and there is no problem with public utilities and services.

**(7) Unreasonably disturb existing topography, in order to minimize stormwater runoff and to conserve the vegetation cover and soil.**

There are no conditions on this site that cannot be mitigated. The land is relatively flat and any tree protection or removal will be controlled by the City Forester as well as the Historic District Commission.

---

**STAFF RECOMMENDATION:**

The proposed subdivision meets the minimum Development Standards for R-90 zoned lots and there are no identifiable concerns associated with any of the required findings. Therefore, the approval of this subdivision hinges on whether the proposal complies "to the extent feasible" with the requirements of Section 25-749(b). Staff finds that the proposed subdivision meets the spirit of Section 25-749(b). Creating lots that do not meet the average is not unprecedented in the neighborhood or even on South Van Buren Street. The subdivision is not only in keeping with the variety of lot sizes in the neighborhood but provides a method of reducing the mass and scale of any future dwelling. The combination of the smaller lot size and the Historic District

Commission review and approval will ensure that any future dwelling constructed on the smaller lot will be built in a manner compatible with the surrounding neighborhood and dwellings. Approval of this proposed subdivision will also result in lots that are sensitive to the historic Johnston/Prettyman house.

Based on the above, staff recommends approval, subject to the conditions noted below:

1. That the plat be revised to make modification/additions as identified in Planning Commission Exhibit "A";
2. That the final plat be submitted in an appropriate electronic format as specified in Section 25-782 (c), (d), and (e) of the Rockville Zoning and Planning Ordinance.

**Attachments**

RECEIVED

Oct 17, 1998

OCT 23 1998  
Dean Planning Commission members:

I am writing in support of the application submitted by John R. Law to resubdivide the property located at 100 South Van Buren Street into two lots, as he has requested.

I am aware of what Dr. Law is proposing and I am in full agreement with his request.

The proposed developer is proposing a structure that will not negatively impact on the surrounding properties, and in fact will probably increase the value of existing properties.

Since any such construction would have to be approved by going through a very detailed historic evaluation review process, I am certain that any resulting addition to this parcel of land will fit very nicely into the neighborhood.

I have resided in South Van Buren Street since 1974 and have been aware of the many efforts of Dr. Law to beautify and improve the neighborhood. I am sure he would propose nothing to damage her fine reputation or the quality of the neighborhood.

Sincerely

Attachment 6-7

129 South Van Buren Street

John A. Toren, R. 146

FRANCES BOUIC PARKS  
119 SOUTH VAN BUREN STREET  
ROCKVILLE, MARYLAND 20850

10-19-98

City of Rockville  
Planning Commission;

I am writing to support the John Laws  
intended 9,056 foot building lot.

Houses on our street have been privately  
built on individual lots of various sizes over  
many years. Ours, we built over thirty five years  
ago and I love the street.

I am pleased that John Lifes will  
build a home and we look forward to welcoming  
a new neighbor.

Sincerely,  
Frances Bouic Parks

I am a life long resident of Rockville as were  
my parents and grandparents and my sons will  
live on this street for many years to come.

Thomas W. Yoder

Construction Consultant

(301) 762-4379

123 S. VAN BUREN STREET, P.O. BOX 364, ROCKVILLE, MARYLAND 20850

19 October 1998

Planning Commission  
City of Rockville

Re: Subdivion Application

PLT98-0150

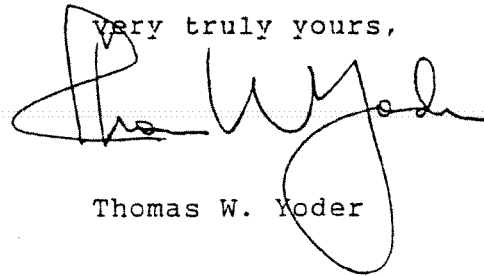
Gentlemen:

This is written as a neighbor of the subject property on South Van Buren Street.

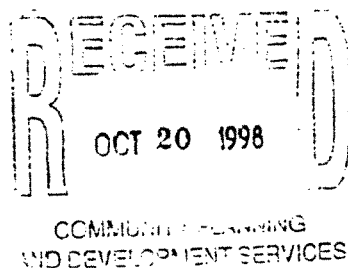
Not only do we not object to the subdivision of Dr. Law's property, but we highly recommend your approval.

We look forward to seeing another new home on our street, in lieu of the hedges now there, and believe it will add value to our home and the other homes on the street.

Very truly yours,



Thomas W. Yoder



Attachment 6-9

R. 148

34

118 S. Van Buren Street  
Rockville, MD 20850  
October 20, 1998

City of Rockville Planning Division  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Application PLT98-0150  
100 S. Van Buren Street

Gentlemen:

I have been out of town and upon my arrival at home in the late evening October 18, received a postcard which had been mailed to the owner/occupant of my home giving notice of a tentative planning commission meeting on Wednesday, October 21, 1998. I would like to ask two questions. Just when will I be informed whether or not this tentative meeting will take place? The other question is why was I not given more notice.

It would seem to me that the intent to subdivide a lot and drastically change a neighborhood should be advertised. To the best of my knowledge, it has not been.

I would like to express my concern about the proposed subdivision of this parcel. South Van Buren Street has always had the reputation of being one of the nicest residential streets in Rockville with spacious lots and mostly good sized homes. Green lawns, gardens, trees and lots of space between houses is a part of the charm of South Van Buren Street. Squeezing a big Pseudo-Gothic/Victorian, or any other \$450,000.00 to \$500,000.00 house on that size lot would begin to change the whole character of the neighborhood. It would also set a precedent on our street which I have noted in other parts of the west end of Rockville. The most egregious example to me would be the placement of seven or eight houses on a small bit of acreage on Maryland Avenue.

Another aspect to consider is the fact that new construction would place an additional strain on the old city pipes in this neighborhood and would make stormwater management more burdensome. We do have a big problem with water pressure in this area.

My house is right next door to this proposed new lot and I am worried that any house squeezed onto a lot smaller than any other on this street would be jammed right up against my property line. I expect that all of the trees would be torn down also. I would also venture to guess that there would be more cars parked on this narrow street.

I have lived in my house for 35 years and it has always been a quiet and serene refuge in the midst of bustling downtown Rockville. With a large house looming so closely over mine, I will feel as though I live in a townhouse subdivision.

It is my hope that the Planning Commission will consider the fact that this is an old established neighborhood and leave it the way it is now.

Very truly yours,

*Jan H. Schiavone*  
Janice H. Schiavone

j  
cc: Peerless Rockville  
The Mayor and council of Rockville

(4)  
Attachment 6-10

R. 149

(35)

132 South Van Buren Street  
Rockville, MD 20850  
October 18, 1998

To whom it may concern:

We have no objection to the subdivision of the 100 South Van Buren Lot of Dr. John Law.

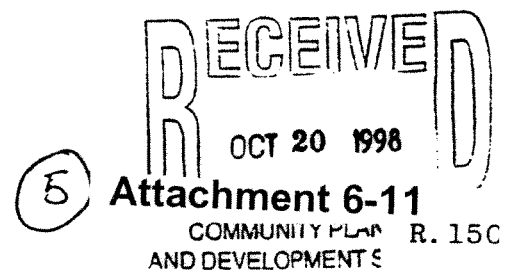
Sincerely,

*Linda D. Harris*

Linda D. Harris

*Gerald R. Harris*

Gerald R. Harris



JACQUES B. GELIN  
105 South Van Buren St.  
Rockville, MD 20850  
(301) 762-7147  
gelinjac@erols.com

October 21, 1998

To the Chairman and Members of the City of Rockville Planning Commission:

I am Jacques Gelin. I reside at 105 South Van Buren Street in Rockville, immediately across the street from Dr. Law. I submit this statement in support of Dr. Law's application.

I have resided in Rockville for over 30 years and have served on the Historic District Commission both as a member and chairman.

I am able to represent to this Commission that the owners of the following properties, all located closer to Dr. Law's property than the objector, support this application. These supporting owners reside at numbers 109 (Florence Ashby and Laird Anderson), 117 (Ellen & Harry Pskowski), and 119 (Frances Bouic Parks).

The Staff Report concedes that Section 25-749, upon which the objector relies probably does not apply to the current application; nonetheless, even under the stricter standard that would apply to a resubdivision, the Staff Report recommends approval. Based on information supplied by Dr. Law and my personal knowledge of the neighborhood, the application is compatible with the surrounding neighborhood and is consistent with both the letter and the intent of the ordinance.

Based on the foregoing, I request that you grant Dr. Law's application.

Respectfully submitted,

*Jacques B. Gelin*

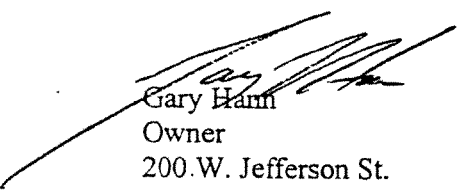
October 21, 1998

Dr. John Law  
104 W. Jefferson St.  
Rockville, Maryland 20850

Dear John:

I am aware of, and support your attempts, to sub-divide your property located at 104 W. Jefferson St., Rockville, Maryland.

Respectfully,



Gary Hamm  
Owner  
200 W. Jefferson St.  
Rockville, Maryland

⑦  
**Attachment 6-13**

R. 152

③⑧

THOMAS A. MADDOX  
PROFESSIONAL LAND SURVEYOR

Registered to Practice:  
Maryland  
Virginia  
District of Columbia

8933 Shady Grove Court  
Gaithersburg, MD 20877  
(301) 984-5804  
(301) 330-0812  
FAX (301) 984-6865

October 20, 1998

City of Rockville  
Planning Department  
111 Maryland Avenue  
Rockville, Maryland 20850-2364

Attn: Margaret Hall, Planner

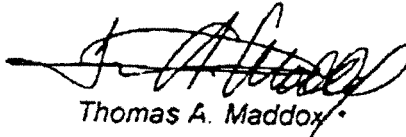
Re: John Law property

Dear Ms. Hall:

This is in reply to your request to determine the average lot area and frontage of existing lots within 500 feet of the subject property. Attached is a copy of part of the Montgomery County tax map with the study area outlined. As you can see from a review of this plan there is hardly an "average" lot considering the variation of sizes and shapes. In making my determination I only considered lots being used as residences.

Based on my review of assessment records, plats within the study area the average lot area is 12,300 square feet and the average lot frontage is 84 feet. I hope this information will serve your intended use. If you have any questions on this matter please contact me.

Yours truly,



Thomas A. Maddox

cc: John Law

Attachment 6-14  
n. 153

Abdul & Natasha Jarrah  
107 West Argyle Street, Rockville, MD 20850  
(301) 279-7965 ph / (301) 738-1175 fax

October 21, 1998

To the Planning Commission of Rockville,

Dear Members of the Planning Commission,

As neighbor's of Dr. Law. we are submitting this letter in support of his petition to subdivide his property in order to sell the vacant lot to a home builder who will in turn build a new home on it. We know of no reason why Dr. Law should not be granted approval to do the above. If you have any questions, please feel free to contact us.

Sincerely,



Natasha and Abdul Jarrah

Attachment 6-15

R.154

40



Rory S. Coakley Realty, Inc. • 20 Courthouse Square • Suite 106 • Rockville, Maryland 20850  
(301) 340-8700 • Fax: (301) 340-6380

To: City of Rockville Planning Board  
From: Rory S. Coakley, President *RSC*  
Re: PLT 98-0150  
Date: October 21, 1998

I have reviewed the subdivision application referenced above. The proposed subdivision of the parcel into two lots of 8429 s.f. and 9056 s.f. is in keeping with the typical lots on South Van Buren Street and the surrounding neighborhoods. As a real estate professional involved in both brokerage and appraisal, my firm handles numerous transactions and appraisals in the subject's area. I firmly believe that the subdivision will not have a negative impact on the neighborhood; but, rather it will have a very positive impact. The positive impact will come in the form of a brand new \$400,000-\$500,000 home to be built on the new lot. It is my understanding that local builder John Dufief will construct the home. His firm does nothing but high quality work and he will undoubtedly build a home that harmonizes with the existing homes on the street.

Dr. Law is an outstanding citizen in the community and he is not asking for anything special. It appears that this subdivision is allowable and by right in the zoning code. I respect the opinions of all concerned citizens; however, the little opposition mounted against this application is unfounded and unsupported by any empirical data. Please rule in favor of the applicant, Dr. Law. Thank you.

126 South Van Buren Street  
Rockville, Maryland 20850  
October 21, 1998

City of Rockville Planning Division  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Application PLT98-0150  
100 S. Van Buren Street

Dear Commission members:

I am writing a letter stating my family's opposition to the resubdivision of the historic property currently owned by Dr. John Law on West Jefferson Street in Rockville. I am writing on behalf of my late grandfather, John Gordon McDonald, former City Manager of Rockville, who built the beautiful house located on 126 South Van Buren St., where my mother Elizabeth McDonald Landfair currently resides with her husband William Landfair. I am also writing on behalf of my late father, John Gordon McDonald, Jr. who was a Montgomery County employee for over 30 years and who instilled in me and my two brothers the importance of being from Rockville as we grew up. As a child, I never truly understood my father's lament when the quaint town he knew as a boy was destroyed to erect high rise buildings as well as a so called mall in the center of Rockville until now.

I suppose progress is inevitable but I truly believe the progress I have seen lately has sped through the town and county that I love like a runaway freight train. When I raise my children in Rockville, they will never be able to view picturesque tracts of land that existed when I grew up, such as the Chestnut Lodge property or King Hill Farm for progress has turned this land into a sea of large houses on small lots of land. I cringe as I drive past my alma mater, Richard Montgomery High School, which has been hidden by a gigantic Mario furniture building. The only charm that remains in Rockville is the established residential neighborhoods, including the historic district of Rockville. Unfortunately, some of these unprotected properties on West Montgomery Avenue, Forest Avenue and Great Falls Road have already fallen under siege to builders without any consideration for estheticism or symmetry to the surrounding residences. Now the train of progress has stopped on our street and I believe there is a law that exists in the city code which protects the value of existing properties in my mother's neighborhood and which is currently being ignored by the planning office.

The average square footage of the houses close to the Law property on S. Van Buren St. exceeds 20,000 square feet. The average square footage of the houses within a 500 foot radius of the Law property exceeds 14,000 square feet. This proposed 9,000 square foot lot does not come close to touching these averages. I would hope that the historical foundation and planning office would not approve building on a historic property that would be disproportionate to the surrounding residences on the street. The current presence of a swimming pool is not a good enough reason for creating such a small lot.

Attachment 6-17

R. 156

In our opinion, this neighborhood has been subdivided enough. Our side of the street has remained untouched for almost 60 years and the remaining street for over 30 years. People in the surrounding metropolitan area now equate Rockville with the commercialism that is present on Rockville Pike. Few Washingtonians are familiar with the dwindling historic town that remains and which has been named in previous years "Hometown U.S.A." I am writing this letter because I'm passionate about the neighborhood where I was raised. My ancestors have lived in this town since the 1800's. The decision ultimately rests in your hands but if approval of this small lot is granted, then a precedent is set for other remaining property to be destroyed on South Van Buren St. Please take our concerns under careful consideration. I hope one day the children I have grow up on what we believe to be the most beautiful street in Rockville like I did and my father did before me.

Sincerely,

*Mary Elizabeth McDonald*

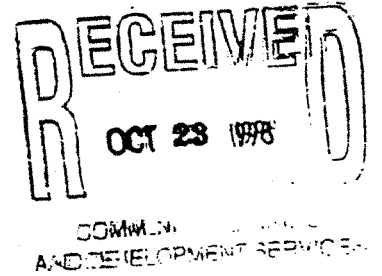
Mary Elizabeth McDonald

Elizabeth McDonald Landfair

*Elizabeth McDonald Landfair*

Harry E. Bailey, Jr. and Catherine R. Bailey  
106 West Argyle Street  
Rockville, Maryland 20850-2326  
301-251-9673

October 21, 1998



Mr. Robert Spalding, Chief  
Rockville City Planning Commission  
Department of Community Planning and Development  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Subdivision Application PLT98-0150  
100 South Van Buren Street

Dear Mr. Spalding:

My husband and I are Rockville City residents for the past 25 years, and neighbors of the referenced property. This letter represents our **support of Dr. Law's proposal** to subdivide the referenced property. We have no objection to an additional single-family dwelling being built on Lot 21 at that location. Many residents have double lots in our subdivision, and the essence of Dr. Law's proposal is exactly why we bought a double lot- the security of real estate in Rockville being so desirable! My husband and I consider it a privilege to support this proposal.

If I can be of further assistance in this matter, please do not hesitate to contact me at my office 301-496-9363, or my husband at the residence phone above.

Very truly yours.

Law Offices of Nancy M. Floreen

401 East Jefferson Street

Suite 203

Rockville, Maryland 20850

301.340.3055 fax 301.340.8653

email floreen@hers.com

October 28, 1998

BY HAND DELIVERY

Ms. Jane Fry-Emond

Chair

City of Rockville Planning Commission

111 Maryland Avenue

Rockville, MD 20850-2364

**Regarding:** Request for Reconsideration of PLT98-0150,  
Lots 20 and 21, Block 3, Dr. John Law

Dear Ms. Fry-Emond:

I represent Dr. John Law with respect to the above referenced record plat which four members of the Commission heard on October 21. Pursuant to Rule 36 of Robert's Rules of Order, we respectfully request that the Planning Commission reconsider Dr. Law's request for record plat approval at its next scheduled meeting.

As the tape of the Commission's October 21 hearing indicates, there was some confusion as to whether Dr. Law's application was a subdivision or a resubdivision subject to the additional standards of Section 25-749 of the Rockville Code. Apparently at the urging of an opposing resident, Dr. Green, the Commission was led to believe that the property had been previously subdivided, and so was subject to the resubdivision criteria which permit the Commission to consider the frontage and lot area of nearby lots in evaluating record plat approval requests. Please be advised that this was in error.

We have attached for your review a number of documents from the Peerless Rockville file detailing the history of transfers of Dr. Law's property. In particular, this material points out that Dr. Law's property was not the subject of the deed sale in 1922 which Dr. Green asserted would be a basis for finding that it had previously been the subject of a "subdivision." In fact, at that time the heirs of the owners of the property sold off some adjoining land, but did not include the property containing what was then known as the Johnston Prettyman house. Peerless Rockville's thorough research reflects that the property on which the home was located has been transferred by deed since 1840. During all its years, the Johnston/Prettyman house has never been "divided" out of another piece of land. This fact is reflected in the City's maps, which show it as a parcel, not as a numbered lot. Your staff report reflects that it is a "previously unrecorded, deeded lot." There is no question that the property has never been the subject of a recorded plat of subdivision or subjected to City subdivision review and approval at any time in the past, nor is

**Attachment 6-20**

R. 159

45

there any doubt that the proposed lot 21 fully meets the requirements of the R-90 zone. Thus, in no instance has the property been "subdivided" as that term is commonly and historically used.

Obviously, if the Commission's view were the case, all properties which it reviews in the subdivision context would be subject to the resubdivision criteria, because they all have been transferred, at some time, by deed, and at some point in history have been part of a larger tract. But such an interpretation is not supported by the City's Code. The Rockville subdivision language clearly recognizes that resubdivision is a subcategory of "subdivision" in its definitions at Section 25-1 of the Code. While the Rockville Code does not provide the Commission with a definition of "resubdivision," we do refer you to the Montgomery County Code, which defines it as "a change in any lot line of a recorded lot or parcel of land. Resubdivision includes the assembly of recorded lots or parts of lots." Montgomery County Code, §50-1. Insofar as the Rockville Code sets out the resubdivision standards for "any resubdivision of existing or undeveloped lots" at §25-749, it is reasonable to conclude that the use of the term "lot" in this context refers to recorded lots as well.

In its review and approval of the subdivision plan, the Historic District Commission properly treated Dr. Law's application as a "subdivision" and not a "resubdivision" as did your staff in their report on the matter. The minutes of its discussion of the proposal reflect the Historic District Commission's conclusion that the subdivision as proposed would have "no adverse impact on the Prettyman House and that any future construction should be compatible in siting, setback, mass, and materials with the established streetscape and historic house" and that "the new lot was not incompatible with the lot size and land use along Van Buren."

In addition, we draw your attention to Section 25-729 of the Rockville Code which applies to Dr. Law's request, characterizing it as a "minor" subdivision with the implication of less rigorous scrutiny, given the limited impact of the two-lot proposal which fully complies with the standards of the R-90 zone on an existing street.

Based on this updated background, we respectfully urge the Commission to reconsider its apparent conclusion that Dr. Law's request was subject to the resubdivision criteria. We hope that you will recognize that to apply such standards was in fact inconsistent with the actions of the Historic District Commission, the analysis of your staff and the history of the property. Moreover, the Planning Commission's stated concerns about the propriety of new construction on Van Buren Street will be more than adequately addressed by the Historic District Commission, the group to which the City has specifically delegated the historic review functions. They will, we are sure, impose its own high standards on lot development to ensure compatibility with the historic fabric of South Van Buren Street. It goes without saying that Dr. Law fully commits to compliance with the Historic District Commission's requirements in this regard.

Because these points create serious questions of law and practice with respect to the

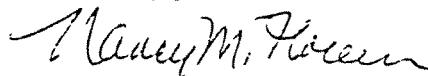
Ms. Jane Fry-Emond  
Chair, Rockville Planning Commission  
October 28, 1998

Page 3

appropriate standards to be applied in this matter, we believe that reconsideration is fully warranted under the circumstances.

We appreciate to the Commission's attention to this request of a long term Rockville resident attempting to straighten out his property affairs following his wife's death, and will be present at your next meeting to answer any questions you may have.

Very truly yours,



Nancy M. Floreen  
Attorney at Law

Enclosures (3)  
cc: Dr. Law

Attachment 6-22 161

47

104 West Jefferson St.  
Rockville, Maryland 20850

Part of Exchange & New Exchange Enlarged, Rockville 4th Dist

GENERAL SUMMARY

This house, lying at the intersection of West Jefferson and South Van Buren Streets, is one of the oldest homes in Rockville, Md. It was constructed prior to 1851 and substantially remodeled in 1876, but is virtually unaltered on the exterior since that time.

This property has been traced back to the original land grant of 1630 acres called Exchange and New Exchange surveyed in 1720.

From 1821-1968 it was the home through seven generations of the Holland/Johnston/Prettyman descendants. This family served the county and the City of Rockville in a variety of fields connected with government, education, religion, the military and the law.

This property is now the residence of John and Margaret Law.

Prepared by: Anne W. Cissel

October, 1978

Sources:

Montgomery County Records (Land, Will, Taxes): Liber and Folios as documented, & Plat B/56

Maps: Martinet & Bond (1865), C. M. Hopkins (1879) p. 10

Photographs: Montgomery County Historical Society Collection, 066-001-123A and 066-001-123C

Portrait & Biographical Record of 6th Congressional District, Chapman Publishing, New York, 1898 p. 669

Various sources in unpublished Prettyman family histories, Capt. Johnston's logbook, etc. (Montgomery County Historical Society)

Montgomery County Sentinel Newspaper, February 4th, 1876.

# PRETTYMAN HOME - CHRONCLOGY

Year  
Land Records

1720

1620 acres were surveyed for Arthur Nelson and named "Exchange and New Exchange".

This land was partitioned several times in the 18th century, however land records prior to 1777 are part of Frederick County records.

1812  
Q/36

Thomas Williams to Thomas Linstead for \$378, part of tract called "Exchange and New Exchange Enlarged", containing 13 1/2 acres.

1823  
W/584

"Whereas by decree of the Court of Chancery, Lewis Gassaway was appointed trustee and authorized to sell real estate of Thomas Linstead, deceased...Lewis Gessaway on 20 September, 1821 did sell to Soloman Holland, tract of parcel called Exchange and New Exchange Enlarged... adjoining Town of Rockville and containing 13 1/2 acres. Being part of the real estate of Thomas Linstead... for sum of \$450.00..."

1820-24  
Tax Records  
p 84  
p.157

Soloman Holland had been Sheriff of Montgomery county in 1792. He was active in city and county affairs and one of the men charged with fulfilling charter for / or so establishment of Rockville Academy. He also donated land for Baptist Church. He owned lands on either side of Academy lot, but his home was on the east side of the Academy, on lots number 6 & 7 of plat of Rockville. He also owned lots 8-12, (unimproved). Lot 12-17 was Rockville Academy, and on west side of Academy lay his 13 1/5 acres of Exchange and New Exchange tract, unnumbered, being outside Town of Rockville.

1839  
Wills - W 356  
Liber 4, page 321

Soloman Holland died, leaving everything to his wife Matilda for use in her lifetime, unspecific as to children's legacy.

1840  
BS 10/300/302

Deed of partition of SH. estate. Nathan Holland and brother Zacharias Holland agree to pay Matilda annual sum for her interest in estate. The two brothers, for their share, choose the land inside the Town of Rockville, Lots 6-12, approximately 11 1/2 acres. The daughter of Soloman Holland, Anne Holland Johns(t)on receives as her share the "Exchange and New Exchange" lot of 13 plus acres.

1840-1850

Erection of house by Captain Zacharias Forrest Johnson, United States Navy. This house is shown in photograph in Montgomery County Historical Society collection. Being numbered C66-CC1-123A (undated) The house is a frame, L-shaped, with dormer windows on second floor of both main mass and side ell. It has a pedimented small porch, no bay windows on the east side and small boxwood bushes lining front walk. It was taken (probably) prior to the Civil War. It is described as "Classical Revival" style.

Attachment 6-2

1851  
STS 5/212

This land record, dated 13 February, 1851 records the following receipt, "... for \$10.00 from S. Stonestreet ground in Baptist Burying Ground, adjoining and north of Captain Johnston's house."

1853-1865

Captain and Anne Johns(t)on had four daughters. One of them Lydia married noted educator Elijah Barrett Prettyman, in 1855. They made their home off and on with Mrs. Johnston when widowed. In the period 1853-1863 Prettyman served as principal of the Brookville Academy. Returning to Rockville in 1863 he was appointed as Clerk of the Circuit Court, a position he held for 22 years. The 1865 Martinet & Bond map shows the house in the name of E.B. Prettyman, although title to it had not yet passed to the Prettyman name.

1867  
EBP 4/342

Anne Johnston grants to her son-in-law EBP and daughter 12 acres of "Exchange and New Exchange", bounded by public road leading from Rockville to the Great Falls of Potomac, same as conveyed by Lewis Gessaway to Solomon Holland, and same as conveyed to Ann Johnson, wife of Zacharias by Deed of Partition at BS 10/300. Cost: \$960.00 (This conveyance excludes the house lot)

1872  
EBP 10/238

This deed was from all the remaining heirs of Anne Johnston and their spouses and conveys the remaining acre and 12.5 perches of land and the house to EBPrettyman and Lydia. Cost: \$1440.00

1876 -February 4th  
Montgomery Sentinel Newspaper:

"Elijah B Prettyman house is nearly complete, directly west of Academy, main building 36 X two stories high, porches in front and rear-east front decorated with two bay windows. Contractor for carpenter's work - John B. Edmonston, Roof by Boule, painting by James Meehan."

1879  
C.M. Hopkins May  
p 10

E.B. Prettyman home and lot shown. Bounded by Jefferson Street, on the East- Rockville Academy and on the West side by Great Falls Road. Van Buren street is not cut through. Drawing of house shows two bay windows and porches.

1922  
328/189

"Heirs of Elijah Prettyman and Lydia Prettyman, deceased agree to sell to Lydia Almoney Brunett, part of real estate, in town of Rockville, of which EBP and wife died seized...For \$10.00 Rosetta Prettyman et al to Lydia Brunett, ... with covenant that "no building, except residence and outbuilding costing no less than \$4,000 shall be built." (This is land south and west of house lot and does not include Johnston/Prettyman house)

1954  
2981/648

William Prettyman et al to Charles and Ruth Prettyman  
"remaining unsold land of Elijah Barrett Prettyman"  
... bounded on the West by South Van Buren Street, on  
the North by West Jefferson and on the East by lands of  
Trustees of Rockville Academy (now Rockville Methodist  
Church).. and on the south by land of (formerly) Lydia  
Brunett... containing approximately 1 acre more or  
less, but is assessed at 32,801 square feet... same  
as described in a deed from Oscar Badger, et al to  
Elijah Prettyman at EBP 10/238.

1968  
3748/390

Ruth Prettyman, widow of Charles, grants to James  
Hathaway same as recorded at 2981/648.

3932/149

James Hathaway to Mayor and Council of Rockville  
3,668 square feet of land.

1974  
4535/474

Deed from James Hathaway to John and Margaret Law  
for parts of tract called "Exchange and New Exchange  
Enlarged", City of Rockville... containing 27,538 square  
feet... and improvements." Beginning for same at end  
of 110 feet on 1st line of conveyance from Oscar Badger,  
et al to Elijah Prettyman for 1.0 acres and 12 square  
perches, recorded at EBP 10/238 and later conveyed to  
J. D. Hathaway in 3748/390.. then to point on southerly  
side of Jefferson Street, as now widened, then along  
south side of said street..../"

Note: Certain variations of spellings such as Johnston/Johnson  
are copied from the land records as is.

Anecdotes or "tales" connected with this house, such as those  
surrounding Jeb Stuart on his way to Battle to Gettysburg are  
undocumented and unsubstantiated, and therefore, omitted.

# Maryland Historical Trust State Historic Sites Inventory Form

Replaces 1976 Form  
M:26/10/3

## 1. Name (indicate preferred name)

historic The Prettyman House

and/or common

## 2. Location

street & number 104 West Jefferson Street not for publication

city, town Rockville vicinity of congressional district 8

state Maryland county Montgomery (RV Planning Area 1)

## 3. Classification

Category	Ownership	Status	Present Use
<u>district</u>	<u>public</u>	<u>occupied</u>	<u>agriculture</u> <u>museum</u>
<u>building(s)</u>	<u>private</u>	<u>unoccupied</u>	<u>commercial</u> <u>park</u>
<u>structure</u>	<u>both</u>	<u>work in progress</u>	<u>educational</u> <u>private residence</u>
<u>site</u>	<u>Public Acquisition</u>	<u>Accessible</u>	<u>entertainment</u> <u>religious</u>
<u>object</u>	<u>In process</u>	<u>yes: restricted</u>	<u>government</u> <u>scientific</u>
	<u>being considered</u>	<u>yes: unrestricted</u>	<u>industrial</u> <u>transportation</u>
	<u>not applicable</u>	<u>no</u>	<u>military</u> <u>other: office</u>

## 4. Owner of Property (give names and mailing addresses of all owners)

name John R. Law et ux.

street & number 104 West Jefferson Street telephone no.: 279-0990

city, town Rockville state and zip code Maryland 20850

## 5. Location of Legal Description

courthouse, registry of deeds, etc. Montgomery Co. Land Records liber 4584

street & number Montgomery Co. Courthouse folio 474

city, town Rockville state Maryland

## 6. Representation in Existing Historical Surveys

title National Register of Historic Places (1974)

date City of Rockville Historic District (1974) Y federal state county Y local

depository for survey records City of Rockville

city, town Rockville state Maryland

## 7. Description

Survey No. M: 26/10/3

Condition		Check one	Check one
<input type="checkbox"/> excellent	<input type="checkbox"/> deteriorated	<input type="checkbox"/> unaltered	<input checked="" type="checkbox"/> original site
<input checked="" type="checkbox"/> good	<input type="checkbox"/> ruins	<input checked="" type="checkbox"/> altered	<input type="checkbox"/> moved
<input type="checkbox"/> fair	<input type="checkbox"/> unexposed		date of move _____

Prepare both a summary paragraph and a general description of the resource and its various elements as it exists today.

The subject house faces north on West Jefferson Street, at the intersection of Van Buren on a narrow deep corner lot. The present Van Buren Street originally served as the lane to the house; its dedication reduced the side yard to a small garden enclosed on two sides by the house. Mature trees shade the house and grounds. A brick herringbone walkway leads to the house and surrounds an ancient tree on the street corner. Old boxwoods line the front walk, obstructing the path and hiding the building front. A driveway from Van Buren leads to a carport at the rear of the main block, enclosing the garden on the third side.

This frame 2-story center hall plan house with 2-story wing is L shaped overall. The three-by-two-bay main block is built on a brick foundation and topped with a low hipped roof covered with asbestos shingles. It has wide boxed eaves. The house is sheathed in beaded German siding on the north and east, the facades exposed to the (then) town, and plain German siding on the south and west with wide cornerboards and cornice with frieze and crown. There are two interior brick chimneys in the main block and one in the wing. The 2-story west wing has an asbestos shingled mansard roof and the foundation is parged with cement.

The original house of 1841 was designed as a 1-1/2 story side-gabled vernacular dwelling with a pedimented front portico in a popularized Greek Revival style. The house had an attached 1-1/2 story west wing and a rear wing. Two pedimented gabled dormers were set into the steep roof on both main mass and wing. In 1876 the house was enlarged and remodeled to Victorian tastes with the raising of the main block to a full two stories with attic, addition of a full width porch, a one-story bay on the east facade, and probably the modification of the west wing roof to a dormered mansard roof. Since these changes, the house has been little altered. (See photograph, attachment 7.3)

The north (front) facade consists of the east three-bay, two-story main block and west two-bay, two-story mansard roofed wing. The main block has three regularly spaced windows on the second story, and elongated, nearly door length windows in the first and third bays, first story. The predominant window type is 2/2 double hung sash, but 6/6 is also used as noted. Most have classic projecting crowned and capped lintels with a moulded strip below the sills and wooden louvered shutters except the wing dormer windows. On the east side only, two scroll brackets support the sills. A wood panelled exterior door with one-light rectangular transom and surrounds similar to the windows is in the center bay, flanked by brass carriage lamps. The main block full-width front porch is set on brick piers and has a low hipped roof supported by four square chamfered and fully capitaled columns. The front porch is accessed by three central wooden steps

continued on attachment 7.1

Attachment 6-28

R. 167

only, two scroll brackets support the sills. A wood panelled exterior door with one-light rectangular transom and surrounds similar to the windows is in the center bay, flanked by brass carriage lamps. The main block full-width front porch is set on brick piers and has a low hipped roof supported by four square chamfered and fully capiteled columns. The front porch is accessed by three central wooden steps flanked by a plain post, rail, and stick balustrade which continues around the perimeters of the porch. The porch rests on brick piers infilled with lattice panels. The slightly hipped seamed tin roof has four chamfered and capiteled wooden columns supporting a wide cornice.

The two-bay wing has four windows, one in each bay first and second story. The mansard roof extends down the facade to the top of the first floor main block windows with approximately a one foot overhang. The two second story dormer windows are set deeply into the mansard roof so that the sills with moulded trim below project only slightly and the flared pediment hoods somewhat more. In appearance, these windows seem almost flush with the roof. The top of the mansard roof has a overhang of several inches which is boxed with a crown moulding as the mainblock eaves. The first floor is nearly obscured by shrubbery.

The west facade consists of the narrow end of the 2-story wing with a one-story shed-roofed office addition and small enclosed entrance portico on the south side, the two-bay west side of the taller main block and a rear south-gabled one-story addition. The wing has one window first and second stories. The main block has one narrow window on the second story, north, by the mansard roof, and a window in the south bay. The first story has a central 6-light wood exterior door and an elongated window in the south bay. To its right is another wood panel exterior door. The addition has one small 6/6 window in the left bay and a larger 6/5 window in the right.

The south (rear) facade has an irregular massing created by additions to both wing and main block. The south side of the wing has two deeply set dormer windows on the second story as described before. The first story is occupied by the office addition with one centered window and 6-light wood panel exterior door. An aluminum storm door is in the entrance portico. The gable end of the rear addition has one 6/6 window and an ornamental weathervane on the gable peak. The rear of the three-bay main block has one window each bay of the second story. A shed-roofed screen porch with a screen door is in the center bay and one mainblock window in the right bay, first story.

The two-bay east facade has one window in the south bay, first and second stories. The north bay has one window, second story, and a flat-roofed, 3-sided, 3-windowed projecting bay on the first story.

continued on attachment 7.2

M:26/10/3  
The Prettyman House  
Attachment 7.2

Interior:

Although updated, many of the original interior features and the floor plan of the main block were retained. Handsome woodwork (baseboards, window and door trims, stair balustrade) and fireplace mantels remain intact. The exception is the black walnut and oak paneled library or rear parlor, described in the 1876 Sentinel (attachment 8.3), which has been removed.

The west wing is accessed through the dining room or front parlor by an enclosed hyphen and descending steps. This area was substantially altered to provide a modern kitchen and informal living room. The second floor now serves as the owner's dental office, accessible through a centrally placed interior stairway.

M: 26/10/3  
The Prettyman House  
Attachment 7.3

104 West Jefferson before 1876  
(tentatively dated by family Fall, 1873)



PHOTO DATED 1873 BY  
PRETTYMAN FAMILY  
PHOTO - MOUNT CO HISTORICAL SOCIETY

## 8. Significant

urvey No. M:26/10/3

Period	Areas of Significance—Check and justify below			
<input type="checkbox"/> prehistoric	<input type="checkbox"/> archeology-prehistoric	<input type="checkbox"/> community planning	<input type="checkbox"/> landscape architecture	<input type="checkbox"/> religion
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> archeology-historic	<input type="checkbox"/> conservation	<input type="checkbox"/> law	<input type="checkbox"/> science
<input type="checkbox"/> 1500-1599	<input type="checkbox"/> agriculture	<input type="checkbox"/> economics	<input type="checkbox"/> literature	<input type="checkbox"/> sculpture
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> architecture	<input checked="" type="checkbox"/> education	<input type="checkbox"/> military	<input type="checkbox"/> social/
<input type="checkbox"/> 1700-1799	<input type="checkbox"/> art	<input type="checkbox"/> engineering	<input type="checkbox"/> music	<input type="checkbox"/> humanitarian
<input checked="" type="checkbox"/> 1800-1899	<input type="checkbox"/> commerce	<input type="checkbox"/> exploration/settlement	<input type="checkbox"/> philosophy	<input type="checkbox"/> theater
<input type="checkbox"/> 1900-	<input type="checkbox"/> communications	<input type="checkbox"/> industry	<input checked="" type="checkbox"/> politics/government	<input type="checkbox"/> transportation
		<input type="checkbox"/> invention	<input type="checkbox"/> alterations/addition	<input type="checkbox"/> other (specify)
1841-42, altered 1876		1876 alterations/addition James H. McGill architect		
Specific dates additions 1876		Builder/Architect James B. Edmonston, builder		

check: Applicable Criteria: ☐ A ☐ B ☐ C ☐ D  
and/or  
Applicable Exception: ☐ A ☐ B ☐ C ☐ D ☐ E ☐ F ☐ G  
Level of Significance: ☐ national ☐ state ☐ local

Prepare both a summary paragraph of significance and a general statement of history and support.

**Significance**  
The Prettyman house is architecturally noteworthy as an example of an 1840s popularized Greek Revival vernacular house, remodeled and enlarged to its present configuration in 1876. It is associated with five generations of the Johnston-Prettyman family who were notable in public service, education, religion, and the military.

### History and Support

Solomon Holland was the Register of Wills for Montgomery County from 1808 until his death in 1839. After his death his late 18th century home on South Washington Street ( Site M:26/11/5) devolved to his sons. His wife, Matilda, chose a 13-1/2 acre lot at the western boundary of the Town of Rockville adjoining the Rockville Academy, across from the Baptist Cemetery, and stretching south along the Road to Great Falls. 1/ On this site in 1841-42, the subject house was constructed for Capt. Zachariah F. Johnston and his wife Anne Holland Johnston, daughter of Solomon and Matilda Holland. 2/ The house is specifically mentioned in a receipt dated 1845 for a burial plot in the cemetery.

A photograph of the Prettyman family and the house taken in 1873 shows the appearance of the original house before alteration. The 1-1/2 story frame dwelling had gabled dormers, exterior end chimneys, and a side wing. The front facade was decorated by a pedimented entry porch with classical columns in the Greek Revival style. 3/ (Photo, attachment 7.3)

Capt. Johnston served 41 years in the U.S. Navy. One of his tours of duty included patrolling the Pacific waters off the coast of California during the 1849 Gold Rush. 4/ According to the 1850 census this Rockville residence sheltered his wife, his mother-in-law and his five daughters.

continued on attachment 8.1

M:26/10/3  
The Prettyman House  
Attachment 8.1

Johnston's eldest daughter married Oscar Badger, USN; that branch of the family continued the Naval tradition for three generations. His daughter Mary married Cooke Luckett, teacher and later Principal of the Rockville Academy. His second daughter Lydia was 17 years old in 1850.

Elijah Barrett Prettyman was the son of a Methodist Minister, a graduate of Dickinson College, and a teacher when he came to Rockville in 1851 to read law with Judge Richard Bowie. 5/ He and Lydia Johnston were married in 1855, by which time he had become Principal of the Brookeville Academy. He remained in Brookeville until 1863 when he returned to Rockville to become Clerk of the Circuit Court for Montgomery County, a public office he held for 22 years.

Mrs. Holland sold the 12 acres surrounding the residence to Elijah for \$960 in 1867, but retained title to the house until her death in 1870. Elijah bought the homestead from the other heirs for \$1,440 in 1872.  
6/

Washington D.C. Architect James H. McGill was engaged to remodel and enlarge the old house in the newest Victorian style. He substituted a full width "Piazza" on the first floor for the original porch. Changes to the fenestration and roof lines are shown on the extant elevations and plans, "Drawings of Alterations and Additions to the E.B. Prettyman House, Rockville, Md", now held by the present owner. The Sentinel of December, 1876 (see attachment 8.3) noted the completion of the work by local contractor John S. Edmonston and described the size of the house and its custom features such as black walnut panelling in the library, rose tinted wallpaper and the latest silver Latrobe stoves. The kitchen wing is not shown on the architectural drawings, but it is believed that the mansard roof now present on this wing was done at the same time. 7/

Some of the surrounding acreage was sold later as the west end of Rockville became a desirable suburban address. One lot was sold to Mr. Prettyman's deputy R.S. Patterson. Both Marian Prettyman, who married local newspaper publisher Albert Almoney, and the widowed Sophia Higgins purchased lots on the west side of the Prettyman stable lane, later platted as South Van Buren Street.

In 1899 Mr. Prettyman was appointed the third State Superintendent of Schools: at that time the job also included the position as Principal of the State Normal School at Towson. He retired to Rockville in 1905 and died two years later. Lydia Prettyman died in 1919; subsequent occupants of the house included the children and grandchildren of the couple, including the widower Rev. Forrest Prettyman, Chaplain of the U.S. Senate; Miss Lydia Prettyman, Deputy Register of Wills for Montgomery County, and various maiden aunts. 8/ Financial considerations forced the sale of most of the property with its grove of chestnut trees. The land on Falls Road was sold for development, and the stone dairy, stable and other outbuildings disappeared as Van Buren Street was extended southward.

continued on attachment 8.2

Attachment 6-33

R. 172

58

Charles Wesley Prettyman and his wife Ruth were the last of the family to own the house. Mr. Prettyman was an attorney and member of the Rockville City Council. By the time of their purchase in 1954 the old house was badly deteriorated and required rehabilitation and modernization.

Between 1968 and 1974 James Hathaway owned the house; since 1974 it has been the property of John Law, D.D.S. who maintains his office on the second floor of the old kitchen wing. 9/

This once quiet neighborhood is now threatened by the heavy traffic, pollution and noise which are the products of its proximity to three heavily travelled arteries into Rockville.

---

Footnotes:

1. Montgomery County Wills W356(1839) and Montgomery County Land Records BS10/300-302 (1840). Boundary Stone II of the Town of Rockville was planted in 1803 at the southwest corner of the Rockville Academy lot, one of the eastern boundaries of the subject property.
2. Land Records, STS 5/212 (1851). The date of construction is based on a rise in the assessed value of the property from \$574 to \$1,800 in the 1841-42 Tax Assessment records.
3. Montgomery County Historical Society Photograph Collection # 066-001-123A, date provided by Prettyman family as Fall, 1873.
4. Montgomery County Sentinel March 25, 1859 obituary. His log book for the "Forty-Niner" period was donated to the Montgomery County Historical Society, but has not been seen for 15 years.
5. Men of Mark in Maryland, Johnson-Wynn Co., (D.C.) 1907, Vol.I, p. 291 and Abstracts of the Minute Books of the Brookeville Academy.
6. Land Records, EBP4/342 (1867) and EBP 10/238 (1872). Although Mr. Prettyman is shown as the owner/occupant of the house on the Martinet & Bond Map of 1865, this is an error as is the outline of Jefferson Street all the way to Falls Road; until the 1890's, Jefferson Street was a dirt path at this point.
7. Two years later, Edmonston constructed a mansard-roofed house for H.W. Talbott nearby at 208 West Montgomery Avenue.
8. Prettyman family genealogies, newspaper articles and church records of various dates 1855-1954.
9. Land Records 2981/648 (1954), 3748/390 (1968) and 4585/474 (1974). The kitchen wing suffered a fire in 1906 which the Sentinel of November 16 said left that portion a "wreck" but did little damage to the main building.

## LOCAL AFFAIRS.

**A Handsome Residence.**—E. B. Prettyman, Esq., Clerk of the Court for this county, has nearly completed the erection of a handsome new dwelling house on his place, directly west of the Academy. The main building is thirty-six by forty feet, two stories high, with porches in front and rear, the east front being decorated with a handsome bay window. The rooms are all large, well lighted and ventilated in the best manner. The contractor for the carpenter's work, Mr. Jno. B. Edmonston, has completed his work in a manner to reflect credit upon himself and associates. The roofing was executed in good style by Mr. Louis Viati, of this place. The painting of the entire building was executed by Mr. Jas. Meenan, and for beauty of finish is certainly equal, if not superior, to any work of the kind in this section. The parlor is superbly finished in French embossed paper with light rose tint ceiling, trimmings and doors glass white. The large library in the rear of the parlor is a very handsome room, finished in black walnut and oak panel with chestnut trimmings, and French black walnut wainscoting. The ceiling is handsomely calumined in two different colors and decorated with a beautiful centrepiece. A spacious hall traverses the centre of the building on both floors, and is finished in balauine, with black walnut doors and trimmings. The four bed-rooms are beautifully finished, each one being of a different color—blue, pearl, rose and grey. The dining-room is finished in oak with a paloted floor. The parlor library and two of the chambers are heated by a "Silver Palace Latrobe heater." For convenience this building has no superior in this vicinity.

SENTINEL—DEC. 22, 1876.

Attachment 6-35

R. 174

60

M: 26/10/3  
The Prettyman House  
Attachment 8.3

MONTGOMERY COUNTY SENTINEL  
December, 1876

ROCKVILLE LAND MARKS  
JEFFERSON ST. # 104  
"PRETTYMAN HOUSE"

## 9. Major Bibliographical Reference.

Survey No. M:26/10/3

Montgomery County Land, Will, Equity and Tax Records. Montgomery County Sentinel, 1855-1954; Montgomery County Historical Society: photographs, maps, Prettyman Collection of documents, histories and genealogy, Architectural drawings (1876).

## 10. Geographical Data

Acreage of nominated property 27,538 square feet

Quadrangle name \_\_\_\_\_

Quadrangle scale \_\_\_\_\_

UTM References do NOT complete UTM references

A 

--	--	--	--	--	--	--	--	--	--

  
Zone Easting Northing

B 

--	--	--	--	--	--	--	--	--	--

  
Zone Easting Northing

C 

--	--	--	--	--	--	--	--	--	--

D 

--	--	--	--	--	--	--	--	--	--

E 

--	--	--	--	--	--	--	--	--	--

F 

--	--	--	--	--	--	--	--	--	--

G 

--	--	--	--	--	--	--	--	--	--

H 

--	--	--	--	--	--	--	--	--	--

Verbal boundary description and justification

Fronting on the south side of West Jefferson Street and bordering the east side of South van Buren Street.

List all states and counties for properties overlapping state or county boundaries

state	code	county	code
state	code	county	code

## 11. Form Prepared By

name/title	Anne Cissel	Judy Christensen, Arch. Description
organization	Peerless Rockville	date 1976, revised Dec. 1985
street & number	P.O. Box 4262	telephone 762-0096
city or town	Rockville	state Maryland 20850

The Maryland Historic Sites Inventory was officially created by an Act of the Maryland Legislature to be found in the Annotated Code of Maryland, Article 41, Section 181 KA, 1974 supplement.

The survey and inventory are being prepared for information and record purposes only and do not constitute any infringement of individual property rights.

return to: Maryland Historical Trust  
Shaw House  
21 State Circle  
Annapolis, Maryland 21401  
(301) 269-2438

Attachment 6-36

PS R. 175

61

# ACHS SUMMARY FORM

1. Name Prettyman House

2. Planning Area/Site Number 26/10

West Montgomery Avenue HD

4. Address 104 West Jefferson Street  
Rockville, Md.

3. MNCPPC Atlas Reference Map 15  
Coordinate G-13

5. Classification Summary

Category building

Ownership private

Public Acquisition N/A

Status occupied

Accessible no

Present use private residence

Previous Survey Recording

MNCPPC-County, Local-1976  
National Register-Federal-1975  
Rockville Historic District  
Commission-1974  
Federal State County Local

5. Date 1851

3. Apparent Condition

a. excellent

b. altered

7. Original Owner Capt. Zachariah  
Johnston

c. original site

9. Description: This rectangular 2½ story, 3 bay by 2 bay, frame house fac north. The main (east) section of the house is built on brick foundations, and has a low hipped roof covered by asbestos shingles. There are two interior chimneys, and a one story bay window on the first floor. This section has a front porch with quarter hipped roof and balustraded railing. The double windows flanking the front door are unusually long and reach the porch floor.

The west addition was made to the house during a major remodeling in 187. It has poured concrete foundations, and a mansard roof covered by asbestos shingles. There are 2 dormer windows flush against the north side of the roof. There is an interior chimney in this section. There is a lovely private garden at the back of the house.

1. Significance: This house is one of the oldest in the city of Rockville. For almost 150 years the property has been owned or occupied by one family whose succeeding generations have served Montgomery County and the city of Rockville with distinction in the fields of education, religion, law and the military.

One of the first sheriffs of Montgomery County, Solomon Holland, purchased 13.5 acres here in 1821, and passed it to his daughter Anne Johnston. She and her husband Captain Zachariah Forrest Johnston, U.S.N., built the house about 1851. One of the four Johnston daughters married educator Elijah Barrett Prettyman, who served as principal of the Brookeville Academy from 1853-63, and as Clerk of the Montgomery County Circuit Court from 1863-85. The Prettymans extensively remodeled the house in 1875-6, adding the mansard roof, large porch, and bay windows on the east side.

The Prettyman son (William) and grandson (Charles) also lived here. They were attorneys, active in County politics, religious, and community affairs. They served as trustees and administrators for the Rockville Academy next door. In 1922, 12 acres was sold off, and the remaining acre passed from the family in 1968. The present owner uses the property as a combined residence and office.

1. Compiler Eileen McGuckian 13. Date Compiled 2/79

14. Designation  
Approval

..Researcher/Date: Anne W. Cissel Nov. 1973

Candy Reed/Architectural Description

Attachment 6-37 176

MARYLAND HISTORICAL TRUST

M: 26/10  
West Montgomery HD  
Magi #

INVENTORY FORM FOR STATE HISTORIC SITES SURVEY

**1 NAME**

HISTORIC

Prettyman House.

AND/OR COMMON

**2 LOCATION**

STREET & NUMBER

104 West Jefferson Street

CITY, TOWN

Rockville

VICINITY OF

CONGRESSIONAL DISTRICT

8th

STATE

Maryland

COUNTY

Montgomery

**3 CLASSIFICATION**

CATEGORY

OWNERSHIP

STATUS

PRESENT USE

☐ DISTRICT

☐ PUBLIC

☒ OCCUPIED

☐ AGRICULTURE

☐ MUSEUM

☒ BUILDING(S)

☒ PRIVATE

☐ UNOCCUPIED

☐ COMMERCIAL

☐ PARK

☐ STRUCTURE

☐ BOTH

☐ WORK IN PROGRESS

☐ EDUCATIONAL

☒ PRIVATE RESIDENCE

☐ SITE

☐ PUBLIC ACQUISITION

☐ ACCESSIBLE

☐ ENTERTAINMENT

☐ RELIGIOUS

☐ OBJECT

☐ IN PROCESS

☐ YES: RESTRICTED

☐ GOVERNMENT

☐ SCIENTIFIC

☐ BEING CONSIDERED

☐ YES: UNRESTRICTED

☐ INDUSTRIAL

☐ TRANSPORTATION

☒ NO

☐ MILITARY

☐ OTHER

**4 OWNER OF PROPERTY**

NAME

John and Margaret Law

Telephone #: 279-0990

STREET & NUMBER

104 Jefferson Street

CITY, TOWN

Rockville

VICINITY OF

STATE, zip code

Maryland 20850

**5 LOCATION OF LEGAL DESCRIPTION**

COURTHOUSE,  
REGISTRY OF DEEDS, ETC.

Montgomery County Courthouse

Liber #: 4584

Folio #: 474

STREET & NUMBER

CITY, TOWN

Rockville

STATE

Maryland 20850

**6 REPRESENTATION IN EXISTING SURVEYS**

TITLE

Rockville Historic District Commission Survey

DATE

1974

☐ FEDERAL ☐ STATE ☐ COUNTY ☐ LOCAL

DEPOSITORY FOR  
SURVEY RECORDS

Rockville City Hall

CITY, TOWN

Rockville

STATE

Maryland

# ☒ DESCRIPTION

## CONDITION

☒ EXCELLENT  
☐ GOOD  
☐ FAIR

☐ DETERIORATED  
☐ RUINS  
☐ UNEXPOSED

## CHECK ONE

☐ UNALTERED  
☒ ALTERED

## CHECK ONE

☒ ORIGINAL SITE  
☐ MOVED DATE \_\_\_\_\_

DESCRIBE THE PRESENT AND ORIGINAL (IF KNOWN) PHYSICAL APPEARANCE

This rectangular, two and a half story, three bay by two bay, wood frame house is in excellent condition. Built on a corner lot close to West Jefferson Street, near the heart of the city of Rockville, it faces north.

The main (east) house is built on brick foundations while the west addition has poured concrete foundations. The north and east elevations have white novelty siding and the south and west elevations have white clapboarding. There is a porch on the north (front) elevation of the east section. This porch has a quarter hipped roof which is supported by four chamfered wooden posts. A balustraded railing encloses the porch except where the steps from the walk lead up to the porch. The north (front) door is wooden paneled and is surmounted by a single light transom. The double windows flanking the north door are unusually long and reach the porch floor. There is a one story bay window at the first floor in the northeast corner of the east elevation. These windows are all two-over-two double hung. They are surmounted by simple carved wooden lintels and flanked by black wooden louvered shutters.

The main (east) house has a low hipped roof covered by asbestos shingles. The west addition has a mansard roof covered by asbestos shingles. There are two dormer windows sit flush against the north mansard roof. These two-over-two double hung windows have molded lintels with a peak at the center. There are two interior chimneys in the east section and one interior chimney on the west section.

There is a lovely private garden at the back of this house.

CONTINUE ON SEPARATE SHEET IF NECESSARY

Attachment 6-39 <sub>3</sub>

64

# SIGNIFICANCE

PERIOD	AREAS OF SIGNIFICANCE -- CHECK AND JUSTIFY BELOW			
<input type="checkbox"/> PREHISTORIC	<input type="checkbox"/> ARCHEOLOGY-PREHISTORIC	<input type="checkbox"/> COMMUNITY PLANNING	<input type="checkbox"/> LANDSCAPE ARCHITECTURE	<input type="checkbox"/> RELIGION
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> ARCHEOLOGY-HISTORIC	<input type="checkbox"/> CONSERVATION	<input checked="" type="checkbox"/> LAW	<input type="checkbox"/> SCIENCE
<input type="checkbox"/> 1500-1599	<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> ECONOMICS	<input type="checkbox"/> LITERATURE	<input type="checkbox"/> SCULPTURE
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> ARCHITECTURE	<input checked="" type="checkbox"/> EDUCATION	<input checked="" type="checkbox"/> MILITARY	<input type="checkbox"/> SOCIAL/HUMANITA-
<input type="checkbox"/> 1700-1799	<input type="checkbox"/> ART	<input type="checkbox"/> ENGINEERING	<input type="checkbox"/> MUSIC	<input type="checkbox"/> THEATER
<input checked="" type="checkbox"/> 1800-1899	<input type="checkbox"/> COMMERCE	<input type="checkbox"/> EXPLORATION/SETTLEMENT	<input type="checkbox"/> PHILOSOPHY	<input type="checkbox"/> TRANSPORTATION
<input type="checkbox"/> 1900-	<input type="checkbox"/> COMMUNICATIONS	<input type="checkbox"/> INDUSTRY	<input type="checkbox"/> POLITICS/GOVERNMENT	<input checked="" type="checkbox"/> OTHER (SPECIFY)
		<input type="checkbox"/> INVENTION		Local History

SPECIFIC DATES Built 1851  
Remodeled 1876

BUILDER/ARCHITECT

## STATEMENT OF SIGNIFICANCE

This house is one of the oldest in the city of Rockville. For a 150 years the property has been owned or occupied by one family whose succeeding generations have served Montgomery County and the city of Rockville with distinction in the fields of education, religion, law and military.

As part of the original "Exchange and New Exchange" grant, one of the first Sheriffs of the county, Solomon Holland, purchased 13.5 acres in 1821. Holland was also instrumental in fulfilling the charter for establishment of the Rockville Academy and the establishment of the Rockville Female Seminary. At his death in 1839 his estate passed to his wife then to his children. In 1840 partition of his estate was made, and this 13.5 acre tract was deeded to his daughter Anne H. Johnston. Anne was married to Captain Zachariah Forrest Johnston, and in 1851 the house was built.

Contemporary photographs of the house circa 1850-1860, show the "classical revival" home, with small pedimented porch and dormer window on both main mass and west wing.

One of the four Johnston daughters married educator Elijah Barrett Prettyman. From 1853-1863 he served as principal of the Brookeville Academy, returning to Rockville in 1863 to serve as Clerk of the Circuit Court of Montgomery County, a position he held for 22 years. The 1865 Martinet & Bond map names E.B. Prettyman as occupying the house although title did not pass to him and his wife from her mother until later. In 1867 Prettyman purchased the 12 acres surrounding the house for \$9600.

In 1872 the final acre, including the house, was sold to for \$14405.

In 1876 extensive remodeling of the house was undertaken to modernize and introduce the newest architectural details, such as the mansard roof, larger porch and addition of bay windows on the east side. The Montgomery County Sentinel newspaper pronounced the house "nearly complete" in its edition of February 4, 1876.

The Prettyman son (William) and grandson (Charles) continued to occupy the house in later years. They were attorneys, active in county political, religious and community affairs. Like the Hollands and the elder Prettyman, they served as trustees and administrators for the Rockville Academy which was adjacent to their own property.

Through the years the exterior of the house remained virtually unchanged.

CONTINUE ON SEPARATE SHEET IF NECESSARY

Attachment 6-40

(continued on attachment R.179)

65

Attachment Sheet A

In 1922 the surrounding acreage was divided, with 12 acres sold to Lydia Almoney Brunett, one of the Prettyman heirs.<sup>7</sup> The last acre, including the house lot, passed from the Prettyman family in 1968.<sup>8</sup> A strip of the lot was deeded to the Mayor and Council of Rockville for street widening in 1969.<sup>9</sup>

The present owner is John Law who uses it as a combined residence and office.<sup>10</sup>

Footnotes

1. Land Records of Montgomery County, (BS 10/300; BS 10/302)
2. Montgomery County Assessment Records, 1841-52, p. 230 (See receipt at STS 5/212: "...for \$10.00, from E. Stonestreet, ground in the Baptist Burying Ground, adjoining and north of Captain Johnston's house")
3. (Photo 066-001-123A) (undated), Montgomery County Historical Society's Photograph Collection
4. Land Records of Montgomery County (EBP 4/342)
5. Ibid., (EBP 10/238).
6. (Photo 066-001-23C) (1835), Montgomery County Historical Society's Photograph Collection
7. Land Records of Montgomery County, Md., 328/189.
8. Ibid., 3748/390.
9. Ibid., 3932/149.
10. Ibid., 4585/474 (1974).

## MAJOR BIBLIOGRAPHICAL REFERENCES

See attached sheet B.

CONTINUE ON SEPARATE SHEET IF NECESSARY

## GEOGRAPHICAL DATA

ACREAGE OF NOMINATED PROPERTY 27,538 square feet, part of tract called "Exchange and New Exchange Enlarged", City of Rockville, Rockville District.

### VERBAL BOUNDARY DESCRIPTION

Bounded on the north by West Jefferson Street, on the east by the Rockville Academy lot, on the south by land of (formerly) Lydi Bruntett and on the west by South Van Buren Street.

### LIST ALL STATES AND COUNTIES FOR PROPERTIES OVERLAPPING STATE OR COUNTY BOUNDARIES

STATE

COUNTY

STATE

COUNTY

## FORM PREPARED BY

NAME / TITLE

Anne W. Cissel

Candy Reed

Architectural Description

ORGANIZATION

Sugarloaf Regional Trails

DATE

November 1, 1978

STREET & NUMBER

Box 87

TELEPHONE

926-4510

CITY OR TOWN

Dickerson

STATE

Maryland 20753

The Maryland Historic Sites Inventory was officially created by an Act of the Maryland Legislature, to be found in the Annotated Code of Maryland, Article 41, Section 181 KA, 1974 Supplement.

The Survey and Inventory are being prepared for information and record purposes only and do not constitute any infringement of individual property rights.

RETURN TO: Maryland Historical Trust  
The Shaw House, 21 State Circle  
Annapolis, Maryland 21401  
(301) 267-1438

SUGARLOAF REGIONAL TRAILS  
Box 87, Swansboro  
Dickerson, Md. 20753  
(301) 926-4510

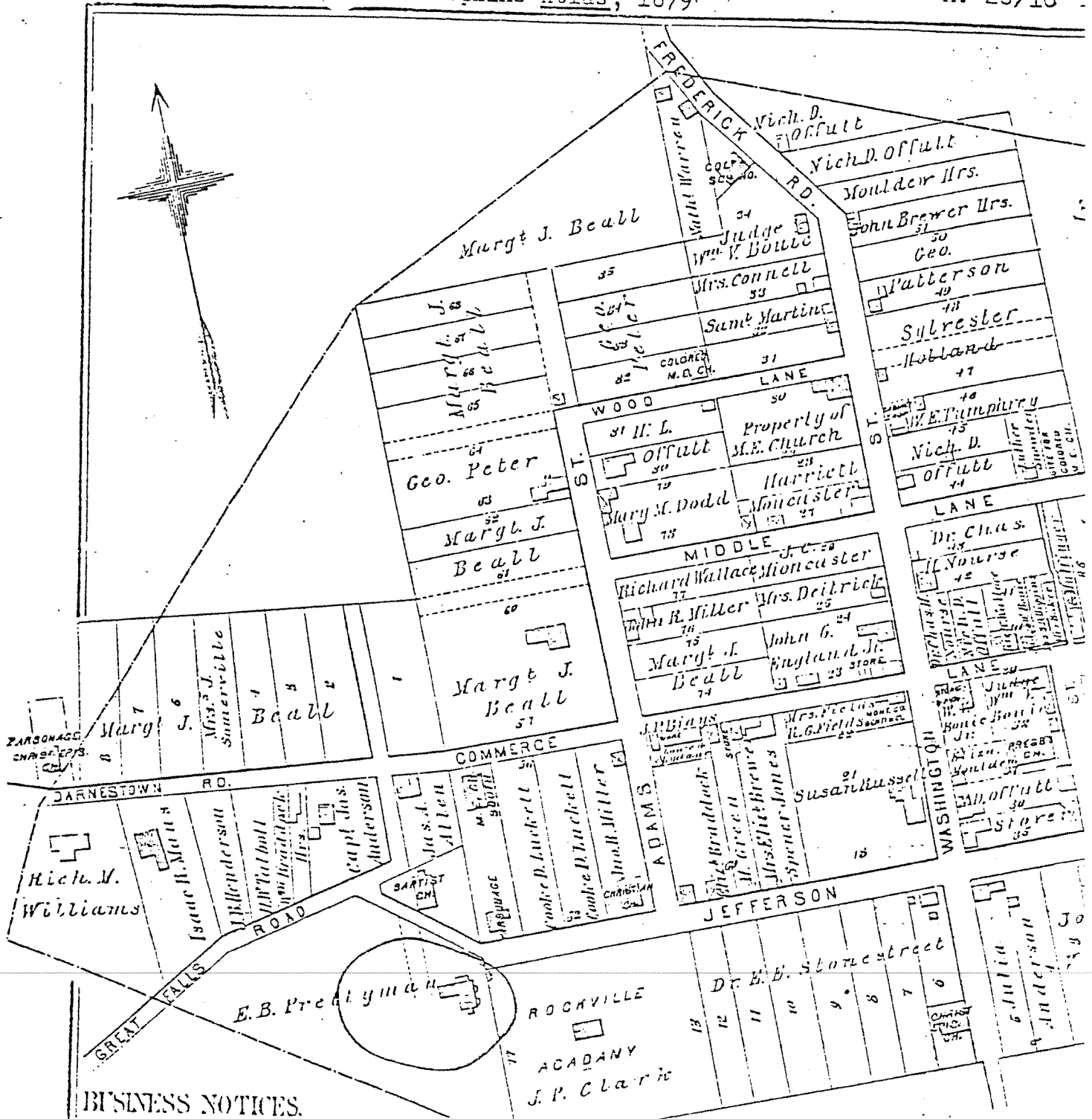
Attachment 6-42

R. 181

67

BIBLIOGRAPHY

1. Land Records of Montgomery County, Md.
2. Montgomery County Assessment Records: Fourth District (1840), p. 77;  
(1841-52) p. 230  
Third District (1820-1824)  
pp. 28, 84, 157.
3. Will Records, Montgomery County
4. Montgomery County Sentinel
5. Photographs of the Montgomery County Historical Society.
6. Martinet & Bond Map, 1865.
7. Portrait & Biographical Records of the 6th Congressional District,  
Chapman Publishing Co., 1898, p. 669.
8. Steiner, Bernard, Men of Mark in Maryland, Washington, D.C.:  
1907, p. 291.
9. "Recollections of William F. Prettyman", 1973
10. Undated architectural drawings of house plan in possession of  
Dr. and Mrs. Law.
11. C. M. Hopkins (1879) Map, p. 10.
12. Various sources in unpublished Prettyman family histories, Capt.  
Johnson's logbook, etc. (Montgomery County Historical Society).



# BUSINESS NOTICES.

## ATTORNEYS AT LAW.

Spencer C. Jones,  
Attorney at Law and Solicitor in  
Chancery.  
Rockville, Md.

Hattersly W. Tolbol,  
Attorney at Law,  
Office on Perry St.

Anderson & Bonie,  
Attorneys at Law and Solicitors in Chancery,  
The Interior,  
W. V. House, Jr.

James Dawson,  
Attorney at Law.

John T. Vinson,  
Attorney at Law.

Peter & Henderson,  
Attorneys at Law,  
Rockville, Md.

## MERCHANTS.

James P. Buys,  
Dealer in Dry Goods, Groceries,  
Furniture, etc.

D. F. Owens,  
Dealer in Dry Goods, Groceries, Fruits,  
Glass, Stationery, Books, Toys and  
Furniture and Cigars.

David H. Bonie,  
Dealer in Dry Goods, Groceries, and  
Merchandise Generally.

Stephen B. Laddane,  
Dealer in Groceries, Groceries, Cattle,  
Furniture, Agricultural Implements, etc.  
Upper Hill, D.C.

## MISCELLANEOUS.

Henry Insley,  
Manufacturing Jeweler and Silversmith,  
Upper Hill, D.C.

W. H. Crismond,  
Hair Dressing and Shaving Saloon,  
also Music furnished at short notice  
on reasonable terms.

Alex. Kilgour,  
Agent for P. Zoff & Sons,  
of Baltimore, Md.  
Manufacturers of Perfumery.

## Attachment 6-44

THE PRETTYMAN (LAW) HOUSE AT 104 WEST JEFFERSON STREET

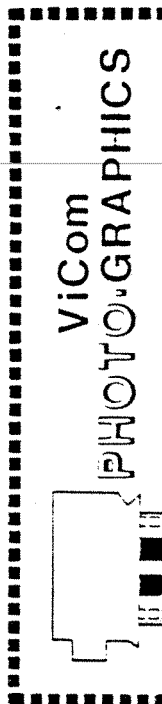
This house, known to old-timers as the "Prettyman house", is one of the oldest in the City of Rockville, having been constructed before the building "boom" of 1880-1900.

Solomon Holland, one of the first sheriffs of Montgomery County, purchased 13.5 acres of "Exchange & New Exchange" in 1821. After his death in 1839, this tract was deeded to his daughter Anne, who married Captain Zachariah Forrest Johnston, U.S. Navy. We know the Johnstons built their house prior to 1851, for in that year E. Stonestreet purchased a lot in the Baptist Burying Ground, "adjoining and north of Captain Johnston's house". J.E.B. Stuart stopped at the house when he came through Rockville on his way to Gettysburg in 1863.

One of the four Johnston daughters married educator Elijah Barrett Prettyman, who served as Clerk of the Montgomery County Circuit Court for 22 years. They purchased 12 acres surrounding the house in 1867 for \$960, and the final acre (including the house) 5 years later for \$1440. In 1876 the Prettymans remodelled the house extensively, introducing the newest architectural details such as the mansard roof, large porch and bay windows on the east side. What is now South Van Buren Street was the stable lane.

The Prettyman son (William) and grandson (Charles) occupied the house in later years. They were attorneys, active in politics, religious and community affairs. Like the Hollands and the elder Prettyman, they served as Trustees and administrators for the Rockville Academy, adjacent to their own property.

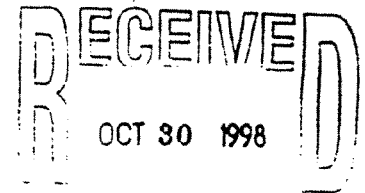
In 1922, the surrounding acreage was divided, but the house and one acre remained in the Prettyman family until 1968. The present owner is John Law, who uses it as a combined residence and orthodontist's office.



-- Information From Peerless Rockville

Attachment 6-45

126 South Van Buren Street  
Rockville, Maryland 20850  
301-424-6429



COMMUNITY PLANNING  
AND DEVELOPMENT SERVICES

October 30, 1998

Ms. Margaret Hall  
Community Planning Division  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Planning Commission Denial of Application PLT98-0150

Dear Ms. Hall:

I attended the Public Hearing on October 21 regarding Application PLT98-0150 to resubdivide the property of Dr. John Law. When the application was denied by the Planning Commission I assumed that the matter was concluded; I now understand that this may not be the case. My husband, William E. Landfair, talked with the Planning Division Director, Mr. Spalding, on October 27 and during their conversation, my husband asked that our neighborhood be informed should the Planning Commission reconsider Application PLT98-0150.

I would like to formally request that if and when any attempt is made to overturn this ruling or to consider another proposal regarding the property in question, that we and our neighbors are informed in a timely manner. I understand that Mr. Spalding stated the most formal method of appealing the matter would be for Dr. Law to take it to the Circuit Court. Should that happen, I and perhaps some of my neighbors might wish to seek legal counsel.

I also would like to state that I was concerned that notification of this matter did not arrive until a week before the Planning Commission's hearing. I was disappointed to hear at the meeting, when Mr. Spalding was asked by a member of the Planning Commission about the late notification to the community, that the Planning Division was not required to inform the neighbors but did so only as a courtesy. We were out of town until the Monday before the meeting and if our vacation had been longer the matter could have been decided without our input. I have lived in Rockville for 40 years and would not like to think a change would take place on the street where I live without being given a chance to state my views. I noticed in the October 28 Rockville Gazette that I can view the plans for the trees in Rockville on the internet and the City Council is urging all residents to offer input. I applaud the Council for publishing information like this and I would like to request that the City Council direct the Planning Division to inform neighborhoods in a timely fashion when changes that directly affect them are to be considered by the Planning Commission.

Sincerely,

*Elizabeth McDonald Landfair*  
Elizabeth McDonald Landfair

Copy to : Mayor Rose Krasnow

(14)

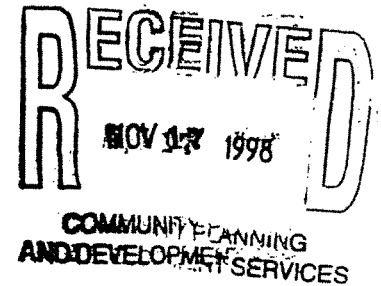
Attachment 6-46

R.185

(71)

Law Offices of Nancy M. Floreen

401 East Jefferson Street  
Suite 203  
Rockville, Maryland 20850  
301.340.3055 fax 301.340.8653  
email floreen@hers.com



November 17, 1998

BY HAND DELIVERY

Robert J. Spaulding  
Chief of Planning  
City of Rockville  
111 Maryland Avenue  
Rockville, MD 20850-2364

**Regarding:** Re-application for Subdivision plan approval  
Lots 20 and 21, Block 3, Dr. John Law

Dear Mr Spaulding:

I represent Dr. John Law with respect to the above referenced application. Enclosed please find the following documents:

- Application
- Six copies of Plan of Subdivision
- Record Plat checklist
- Forest and Tree Preservation Ordinance Application

As this is a renewed application identical to that which was previously filed in September, and because the work in reviewing this has already been substantially completed, we respectfully request that the City waive the applicable fees.

In addition, because of the importance of this application to Dr. Law, and the neighborhood interest it has generated to date, we respectfully request that this application be put on for hearing before the Planning Commission on a date when all Commissioners will be present.

What has changed since the Commission's October 21 hearing on the original request is that Dr. Law has decided that he personally will arrange to have a new home constructed on the new lot for his own personal residence. He has already begun to consult with the Historic District Commission as to their requirements. He has also made repeated efforts to meet with his neighbors and other interested persons to review his planning with them. This decision should ensure the compatibility of the new structure with the existing home and the South Van Buren Street neighborhood and we hope that his extensive efforts will go a long way toward satisfying neighborhood concerns as to change on the property.

Attachment 6-47

R. 186

72

Robert Spaulding  
Chief of Planning  
City of Rockville

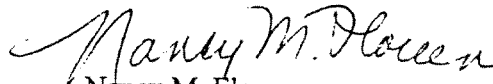
November 17, 1998  
Page 2

In order to assist the Planning Commission in understanding how this will work, Dr. Law also wishes to invite the Planning Commissioners and your staff to visit the property and to let him describe for them exactly what he intends.

We previously provided you with copies of the deeds associated with the property and other documents addressing the character of the Commission's review based on the subdivision, not the resubdivision standards. In order to facilitate matters, we respectfully request that the material previously submitted be made a part of the file on this new application.

Thank you for your prompt attention to these requests. Please do not hesitate to let me know if I can provide you with any further information with respect to this matter.

Very truly yours,

  
Nancy M. Floreen  
Attorney at Law

Enclosures (9)  
cc: Dr. Law

**Attachment 6-48**

R. 187

73

LAW OFFICES  
**MILES & STOCKBRIDGE**

A PROFESSIONAL CORPORATION

22 WEST JEFFERSON STREET  
ROCKVILLE, MARYLAND 20850-4286

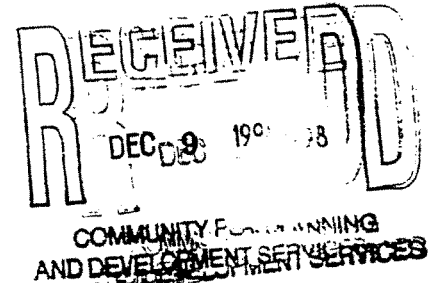
TELEPHONE 301-762-1600  
FAX 301-762-0363

BALTIMORE, MD  
CAMBRIDGE, MD  
COLUMBIA, MD  
EASTON, MD

FREDERICK, MD  
MCLEAN, VA  
TOWSON, MD  
WASHINGTON, D.C.

G. VANN CANADA, JR.  
301-517-4805

December 8, 1998



Ms. Jane Fry-Emond, Chair  
City of Rockville Planning Commission  
111 Maryland Avenue  
Rockville, Maryland 20850-2364

Re: Application for Approval of Final Record  
Plat PLT 98-0154, Proposed Lots 20 and 21,  
Block 3, Original Town of Rockville,  
John T. Law, Applicant

Dear Ms. Fry-Emond:

Please be advised that this firm is counsel to Richard J. Green, D.D.S., M.S.D., the owner of the land and premises known as 124 South Van Buren Street, Rockville, Maryland. Dr. Green's home is located within five hundred (500) feet of the property which is the subject of the application referenced above.

On October 21, 1998, the City of Rockville Planning Commission reviewed the Final Record Plat of Subdivision described above. By letter dated November 6, 1998, the Applicant was informed that approval of the proposed plat of subdivision was denied. By letter dated October 28, 1998, Nancy M. Floreen, Esquire, acting on behalf of the applicant, John R. Law, requested that the Planning Commission reconsider its decision. Apparently, no action to reconsider the proposed plat has been taken.

On November 20, 1998, Dr. Law filed a Petition for Judicial Review in the Circuit Court for Montgomery County identified as Civil Action No. 194485 seeking review by that Court of the decision of the Planning Commission in conformity with the provisions of Rule 7-201, Maryland Rules of Procedure. That proceeding is currently pending before the Court.

We are informed that, notwithstanding the denial of approval of the proposed plat, Dr. Law has filed an additional subsequent request for approval of the same plat which was denied on November 6, 1998. The subsequent request is identified as PLT 98-0154.

**Attachment 6-49**

R. 188

74

MILES & STOCKBRIDGE  
A PROFESSIONAL CORPORATION

Ms. Jane Fry-Emond, Chair  
December 8, 1998  
Page 2

Further, we are informed that the Planning Commission intends to afford Dr. Law the opportunity to pursue the subsequent request for approval by placing the matter on its agenda for its December 16, 1998 session. Dr. Green takes vigorous exception to this action for several reasons.

Initially, a review of the subsequent request reveals that Dr. Law is requesting that the identical final record plat be approved under a new identification number. There is no substantive difference between the original plat and the subsequent plat. The only difference in the application requesting approval is that Dr. Law asserts that he intends to reside in a house to be erected on the proposed lot. Obviously, once approval of the plat is given, neither the Planning Commission nor any other agency within the City of Rockville can enforce the identity of the resident in the proposed house and lot.

Moreover, we suggest that the authority of the Planning Commission to consider the subsequent request for approval of the identical plat has been divested by Dr. Law requesting judicial review of the denial of the prior request for approval. Simply stated, after Dr. Law filed the petition in the Circuit Court, exclusive original jurisdiction over this matter vested in the Circuit Court, as held in Montgomery County v. Ian Corporation, 282 Md. 459, 385 A.2d 80 (1978).

Further, we suggest that for the Planning Commission to permit the filing of the subsequent request for approval of the same lot is nothing more than a request to reconsider the prior decision of the Planning Commission. Obviously, this would lead to a continuous approval process only limited by the tenacity of the applicant. Consequently, the Court of Appeals of Maryland rendered the decision in Schultze v. Montgomery County Planning Board, 230 Md. 76, 185 A.2d 502 (1962) which stands for the notion that once a quasi-judicial body has ruled, the decision may only be reopened and reversed by that body upon a showing of "fraud, surprise, mistake or inadvertence." No such allegations are contained in Dr. Law's subsequent request for approval of the subdivision plat.

In summary, the propriety of the Planning Commission's decision is now the subject of a judicial review as provided by Section 25-39(b) Rockville City Code at the instance of Dr. Law. It is the exclusive province of the Circuit Court to review the record of the proceeding and determine the existence, vel non, of substantial evidence to sustain the Planning Commission's decision. It is inappropriate and most likely illegal for the Planning

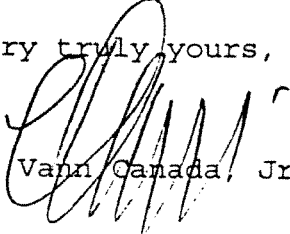
**MILES & STOCKBRIDGE**  
A PROFESSIONAL CORPORATION

Ms. Jane Fry-Emond, Chair  
December 8, 1998  
Page 3

Commission to reconsider its decision or take any other action while the Circuit Court has this matter under judicial review.

If you have any question regarding this matter or we may furnish you with additional information, please do not hesitate to contact the undersigned. We also request that a copy of this letter be included in the record in Application for Approval of Final Record Plat identified as PLT 98-0154, Lot 20 and 21, Block 3, Original Town of Rockville.

Very truly yours,

  
G. Vann Canada, Jr.

GVC:kj

cc: Sondra Block, Esquire  
Paul T. Glasgow, Esquire  
Nancy M. Floreen, Esquire

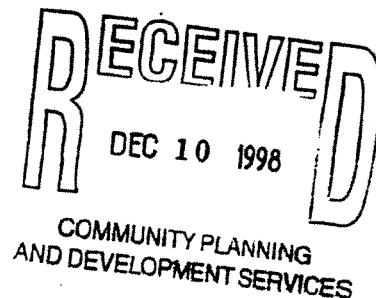
**Attachment 6-51**

R.190

76

Law Offices of Nancy M. Floreen

401 East Jefferson Street  
Suite 203  
Rockville, Maryland 20850  
301.340.3055 fax 301.340.8653  
email floreen@hers.com  
December 10, 1998



BY HAND DELIVERY

Ms. Jane Fry-Emond

Chair

City of Rockville Planning Commission

111 Maryland Avenue

Rockville, MD 20850-2364

**Regarding:** PLT98-0154,

Lots 20 and 21, Block 3, Dr. John Law

Dear Ms. Fry-Emond:

This office is in receipt of a letter sent to you on December 8 on behalf of Dr. Richard Green, a neighbor and opponent of the Dr. Law's application for subdivision plat approval. Dr. Green has argued that because Dr. Law filed an appeal from the Commission's earlier denial of his record plat, so as to preserve his rights, he is therefore precluded from requesting that the full Commission consider his current application, and the Commission is somehow prevented from hearing it. Please be advised that Dr. Green's arguments are misplaced and should be rejected.

Neither the Rockville City Code, your rules of procedure, or Article 66B of the Annotated Code of Maryland, which governs the City's exercise of zoning authority, supports Dr. Green's contention or in any way limit the authority of the Board to hear Dr. Law's pending application. As it is a basic principle of administrative law that an agency's authority is derived from its governing statutes, *eg.*, Lussier v. Maryland Racing Commission, 343 Md. 681, 686, 684 A.2d 804, 906 (1996), that should be the end of the discussion.

Further, however, the cases cited by Dr. Green do not support his arguments. Montgomery County v. Ian Corporation, 282 Md. 459, 385 A.2d 80 (1978) has nothing whatever to do with this matter. It involved the question of timely intervention by the county in property tax assessment matters and the relationship between a circuit court and

**Attachment 6-52**

R. 191

77

Ms. Jane Fry-Emond, Chair  
December 10, 1999  
Page 2

appellate court in addressing errors of the circuit court. Indeed, the very case which Dr. Green cites as his authority, Schultz v. Montgomery County Planning Board, 230 Md. 76, 185 A.2d 502 (1962), in fact justifies Dr. Law's application. In that case, the applicant filed a request for resubdivision which was denied based on neighborhood opposition. The applicant appealed. While that appeal was pending the applicant resubmitted his plan. Upon receiving additional information as to the facts regarding similar development in the same neighborhood, the preliminary plan was approved by the Board. When it came to final formal approval of the plan as had just been approved, opposing neighbors complained again and the Board reversed itself. It was that **second reversal**, the reversal of the approval after re-application, that was challenged and which the Court found to be arbitrary and capricious. Here, similar to the unchallenged events in Schultz, Dr. Law has submitted a new application because erroneous and incomplete information was before the Board previously. In addition, Dr. Law's current intent to retain the new lot for his own use is new information as to the changed character of the application for the Board. Dr. Law here has simply taken the precise same steps as those taken by the ultimately vindicated applicant in Schultz.

As we will explain at the December 18 hearing in this matter, Dr. Law's application comes under your subdivision standards, and is not subject to the resubdivision rules. Dr. Law's property is an unplatted parcel which has never been part of a subdivision in any form. Information submitted by Dr. Green at the Commission's hearing on October 18 with respect to Plat 98-0150 suggesting the contrary was erroneous. As a result the Board has no authority to deny an application which complies with the criteria for subdivision in the R-90 zone. Nonetheless, and without conceding such point, recognizing the interest of the Commission in development which is consistent with the existing patterns through this area of Rockville, we will also present to you further information as to the patterns of lot sizes in the area surrounding Dr. Law's property.

In particular, we will show you that even on the same block and in the same zone as Dr. Law's property, and even in the Historic District, structures have been comfortably developed on smaller properties than the 9,056 square foot lot that Dr. Law is proposing to create. Thus, 113 South Adams Street is a parcel with 6,950 square feet, 115 South Adams Street is a parcel with 8,050 square feet, and 117 South Adams Street is a parcel of 7,500 square feet. Across the street, 106 South Adams is a parcel containing 7,500 square feet. 100, 108, 110, and 118 South Adams are all located on parcels which are less than 9,500 square feet. Moreover, throughout this area of Rockville, not only are there a

Ms. Jane Fry-Emond, Chair  
December 10, 199  
Page 3

number of additional developed parcels which are smaller than the lot proposed by Dr. Law, but there are also a number of lots created by subdivision which are also less than what he proposes, others that are just about of the same size, and an additional number less than 9,500 square feet. In addition, at least three properties on Van Buren Street alone have lot sizes 80 feet in width. What this will go to show is the consistency of Dr. Law's request with the variety of lot sizes scattered throughout the neighborhood. All of this has not detracted from the vibrancy of Rockville's existing neighborhoods or their historic character. None of this was discussed in any detail at the hearing on Plat98-0150.

By this information, Dr. Law hopes to satisfy any planning concerns the Commission may have with respect to his application. He has made every conceivable effort to work with his neighbors to explain the details of his proposal. We have agreed to stay the appeal pending this application. In sum, Dr. Law has done everything within his power to work cooperatively with the City in attempting to resolve questions and issues concerning the application.

We respectfully request that you reject Dr. Green's arguments and proceed to hear Dr. Law's application as scheduled. Please include this letter in your record in PLT 98-0154.

Very truly yours,



Nancy M. Floreen  
Attorney at Law

cc: Sondra Bloch, Esq.  
Paul T. Glasgow, Esq.  
G. Van Canada, Jr. Esq.

**Attachment 6-54**

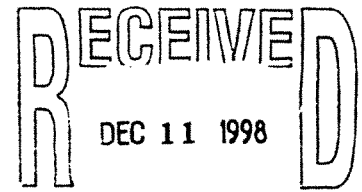
R. 193

79

118 S. Van Buren Street  
Rockville, MD 20850  
December 11, 1998

City of Rockville Planning Commission  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Application PLT98- 0154  
100 S. Van Buren Street



COMMUNITY PLANNING  
AND DEVELOPMENT SERVICES

Ladies and Gentlemen:

I have been informed that although my neighbor's application for resubdivision of his property was denied and his request for reconsideration was denied, he has submitted the identical application for the second time.

I wish to reiterate my position that this nice old neighborhood should be left unchanged. It is one of the few areas in Rockville that has not undergone drastic change and there is certainly no reason for considering change other than for the applicant's financial gain. I am enclosing for your reference a copy of the letter which I wrote at the time of Dr. Law's first application. It is my understanding that a number of homeowners from Argyle Street have written in support of his application. My answer to each of them is that it would not affect them one way or another. They do not live on South Van Buren Street. The fact that they think he is a nice person is really not a supportable reason to change the character of our neighborhood.

As I stated in my letter dated October 20, 1998, any resubdivision of lots on this street would set a precedent. As Mr. Phipps of 131 South Van Buren Street stated at the first meeting on this matter, his home is positioned on the center of two large lots and the house could be torn down in order to create six R90 lots. Mr. Talbott and I could build on the lot between our houses. Mrs. Landfair has 46,000 square feet which could be divided up. Others on this street could do likewise. There are any number of lots on the street which could be resubdivided into R90 lots. The "Old Rockville" charm of South Van Buren Street would be gone.

With all of the changes which we have endured in Rockville, I would like to know that South Van Buren Street will remain unchanged. I turn the corner into our street and it is as it has been for a long, long time, as I stated in my first letter, a quiet and serene refuge in the midst of the bustle of downtown Rockville.

Dr. Law has persuaded some of the neighbors to agree with his argument that "change is inevitable." I would venture to guess that is the kind of thinking that created the Rockville Mall and caused the interesting old houses and businesses lining the streets

  
**Attachment 6-55**

R. 194



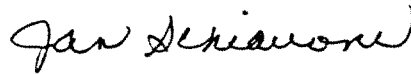
of downtown Rockville to be torn down and irretrievably lost. I believe that this awful event led to the formation of Peerless Rockville and the Historic District Commission.

Financial distress or recent widowhood is irrelevant to resubdividing a property. I, too, am widowed due to my husband's untimely death as was Mrs. Landfair. We also had problems; but we have dealt with them without dividing and upsetting our neighbors.

A letter sent to the neighbors by Dr. Law's realtor stretched the facts with an implied threat that Dr. Law's property might be rezoned commercial. This is an effort to scare neighbors into choosing the lesser of two evils written by someone who would gain financially. I have attached a copy of the letter from Mr. Coakley who, by the way, does not live in Rockville. I am almost afraid to ask what his plan is for stabilizing the residential properties on South Van Buren Street for the next 25-50 years. I have been very happy and stable here for 35 years and others of my neighbors have been here much longer.

I would once again ask that the Planning Commission consider the fact that this is one of the few old established neighborhoods remaining in Rockville and leave it the way it is now. I do not feel that I am, as Mr. Coakley chose to call me, a disgruntled neighbor. My husband and I were thrilled that we could move onto this fine old street in 1963. One of our reasons was that it was an established neighborhood which would not change.

Very truly yours,



Janice H. Schiavone

j  
Enclosures

cc: Peerless Rockville  
West Rockville Citizens Association  
The Mayor and Council of Rockville  
Rockville Historic District Commission

118 S. Van Buren Street  
Rockville, MD 20850  
October 20, 1998

City of Rockville Planning Division  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Application PLT98-0150  
100 S. Van Buren Street

Gentlemen:

I have been out of town and upon my arrival at home in the late evening October 18, received a postcard which had been mailed to the owner/occupant of my home giving notice of a tentative planning commission meeting on Wednesday, October 21, 1998. I would like to ask two questions. Just when will I be informed whether or not this tentative meeting will take place? The other question is why was I not given more notice.

It would seem to me that the intent to subdivide a lot and drastically change a neighborhood should be advertised. To the best of my knowledge, it has not been.

I would like to express my concern about the proposed subdivision of this parcel. South Van Buren Street has always had the reputation of being one of the nicest residential streets in Rockville with spacious lots and mostly good sized homes. Green lawns, gardens, trees and lots of space between houses is a part of the charm of South Van Buren Street. Squeezing a big Pseudo-Gothic/Victorian, or any other \$450,000.00 to \$500,000.00 house on that size lot would begin to change the whole character of the neighborhood. It would also set a precedent on our street which I have noted in other parts of the west end of Rockville. The most egregious example to me would be the placement of seven or eight houses on a small bit of acreage on Maryland Avenue.

Another aspect to consider is the fact that new construction would place an additional strain on the old city pipes in this neighborhood and would make stormwater management more burdensome. We do have a big problem with water pressure in this area.

My house is right next door to this proposed new lot and I am worried that any house squeezed onto a lot smaller than any other on this street would be jammed right up against my property line. I expect that all of the trees would be torn down also. I would also venture to guess that there would be more cars parked on this narrow street.

I have lived in my house for 35 years and it has always been a quiet and serene refuge in the midst of bustling downtown Rockville. With a large house looming so closely over mine, I will feel as though I live in a townhouse subdivision.

It is my hope that the Planning Commission will consider the fact that this is an old established neighborhood and leave it the way it is now.

Very truly yours,

Janice H. Schiavone

J  
cc: Peerless Rockville  
The Mayor and council of Rockville

Attachment 6-57

R. 196

82



Rory S. Coakley Realty, Inc. · 20 Courthouse Square · Suite 106 · Rockville, Maryland 20850

(301) 340-8700 · Fax: (301) 340-6380

November 12, 1998

Dear Concerned Citizens of South Van Buren and Argyle Streets,

My name is Rory Coakley and I own and operate Coakley Realty which is located in downtown Rockville, next to the Courthouses. I assisted my sister in purchasing an historic home at 415 West Montgomery Avenue. As the recently installed President of the Rockville Chamber of Commerce, My family and I have a vested interest in business and real estate in Rockville.

Coakley Realty is Dr. John Law's real estate agency for the sale of his property at 104 West Jefferson Street. I have been working with Dr. Law for almost one year in an effort to assist him in downsizing his primary residence since he is now a widower and does not have the resources or energy to fund and maintain the property. We have studied a variety of options such as: commercial zoning and creating a new lot.

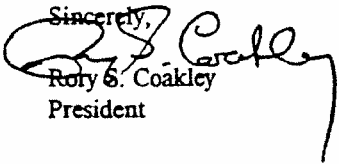
I researched the possibility of rezoning the property for commercial uses. Attempting to change the zoning is probably achievable based on some of the recent cases on nearby properties; however, this would take 6-9 months and some costly expenditures on zoning attorneys, landplanners and civil engineers. This extra time and cost would be more than offset by the increased net proceeds of the sale of a commercial property. Dr. Law was not comfortable with altering the residential nature of South Van Buren Street.

Creating an additional lot seemed to make the most common and economical sense. It appeared to be readily achievable in the R-90 zone as a matter of right. Also, it would maximize Dr. Law's net proceeds on the sale which will enable him to resolve some financial obligations and provide enough funds to purchase or build a home for retirement.

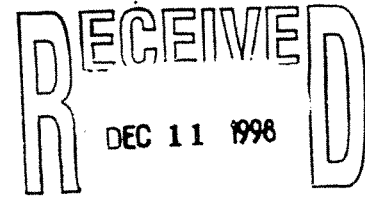
Finally, Dr. Law's existing lot is more than 27,000 square feet. The proposed lot is more than 9,000 square feet which is totally in keeping with the surrounding lot sizes. Whether John DuFief or Dr. Law builds a home on the lot, it will undoubtedly be of the highest quality and in harmony with the neighboring homes.

Please empathize with Dr. Law and the facts regarding this issue. What if this was your property? Should a few disgruntled neighbors have the ability to unjustly interfere with the property rights of a fellow neighbor? I feel Dr. Law should be able to create a new lot and carry out our plan for stabilizing the residential properties on this street for the next 25-50 years.

Sincerely,

  
Rory S. Coakley  
President

*Richard J. Green, DDS, MSD  
124 S. Van Buren Street  
Rockville, Maryland 20850  
301 294-8979*



December 11, 1998

COMMUNITY PLANNING  
AND DEVELOPMENT SERVICES

Ms. Jane Fry-Emond, Chair  
City of Rockville Planning Commission  
111 Maryland Avenue  
Rockville, Maryland 20850-2364

Dear Ms. Fry-Emond:

I object to the final record plat application PLT98-0154 filed by John Law. This application is substantively identical to application PLT98-0150, considered and denied by the Planning Commission on October 21, 1998.

The current application to create a 9,056 square foot building lot is out of character for South Van Buren Street and in violation of Rockville Zoning Ordinance 25-749. Prior to 1923 the Prettyman lot extended to the south line of the Rockville Academy property. On February 28, 1923, this lot was subdivided as defined by the current Rockville City Code. This created a building lot with covenants specifying the construction of a residence valued not less than \$4,000.00 and a right of way for the extension of Van Buren Street. Enclosed are copies of land maps from 1917 and 1930, and the Deed illustrating the subdivision of the Prettyman lot to form the Brunett lot and the extension of Van Buren Street. John Law is now proposing to do again exactly what the Prettyman's did in 1923.

The Planning Commission spent two hours discussing the merits of this proposal at its meeting on October 21, 1998. John Law had the opportunity to withdraw his proposal and request the presence of all seven members of the Commission prior to their voting. He choose not to do so. The quorum of four Commission members voted, and the application was denied. John Law is challenging the Planning Commission's integrity to make a ruling by forcing the Commission to rehear the same proposal under a new application number. This is improper and not a provided method of appeal either in the Planning Commission Rules of Procedure or in Chapter 25 of The Rockville City Code. Any issues in law should be decided on appeal in the Montgomery County Circuit Court. I respectfully ask the Planning Commission to vote to deny application PLT98-0154.

Sincerely,

Richard J. Green, DDS, MSD

enc

Attachment 6-59 198

84

lines are indeterminate and pavement or a well-defined traveled way exists, the centerline shall be assumed to be a line midway between the edges of such pavement or traveled way.

*Street, width* means the horizontal distance between the side lines of a street at right angles to the side lines.

*Structure* means a combination of materials forming a construction for occupancy or other purposes which requires permanent location on the ground or attached to something having permanent location on the ground.

*Subdivider* means any person or duly authorized agent who undertakes the subdivision of land as defined herein and includes the term "developer" even though the personnel involved in successive stages of the project may vary.

*Subdivision* means the division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other divisions of land or assemblage of land for the purpose, whether immediate or future, of sale or of building development. "Subdivision" includes resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or territory subdivided.

*Subdivision, minor* means any subdivision containing not more than three (3) lots fronting on an existing road, not involving any new road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with a provision or portion of the Plan or this chapter.

*Swimming pool* means a pool for swimming by human beings having adequate legal capacity and deck size.

*Swimming pool, accessory* means a swimming pool and/or wading pool, including buildings necessary or incidental thereto, conducted as an accessory use:

(1) Maintained and operated by the management of any multifamily development in any multifamily zone or development; or

(2) Maintained and operated by the management of a hotel or motel for the use of patrons thereof; or





J. A. Stover.

[Internal Revenue \$6.00]

State of Maryland, Montgomery County, to wit:

I hereby certify that on this 20th day of January, in the year 1921, before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared William F. Ridgely and Carrie Ridgely, his wife, and did each acknowledge the foregoing and annexed deed to be their respective act.

As Witness my hand and Notarial seal.

John A. Stover N.P.

John A. Stover

Notary Public

Calithersburg, Md.

At the request of Lydia Almoney Brunett and J. Paul Brunett the following Deed

was recorded February 28th, A.D. 1923 at 10.43 o'clock A.M. to wit: This Deed made this 13th day of February, in the year nineteen hundred and twenty three, by Rosetta F. Prettyman, widow and sole devisee of Charles W. Prettyman, late of Montgomery County, in the State of Maryland, deceased; Eliza F. Kilgour, widow, Anna M. Magruder and Hugh S. Magruder, her husband, of Baltimore City, in the State of Maryland; Forrest J. Prettyman and Elizabeth R. Prettyman, his wife, of Knox County, in the State of Tennessee; Lydia F. Prettyman, unmarried, of Montgomery County, in the State of Maryland; Albert J. Almoney, widower, Mary B. Almoney, unmarried, together with Lydia Almoney Brunett, being the surviving husband and only children and heirs-at-law of Miriam F. Almoney, deceased;

Witnesseth, Whereas the parties grantor herein before named, together with the grantees hereinafter named, are the only surviving devisees of Elijah B. Prettyman, and the only heirs at law of the said Elijah B. Prettyman and Lydia F. Prettyman, his wife, late of Montgomery County, in the State of Maryland, deceased.

And Whereas the said parties grantor have agreed to sell unto Lydia Almoney Brunett and J. Paul Brunett, her husband, the hereinafter described parcel of land, being part of the real estate, situate, lying and being in the Town of Rockville, in Montgomery County, Maryland, of which the said Elijah B. Prettyman and Lydia F. Prettyman, his wife, respectively died seized.

Now, Therefore, in consideration of the premises and in further consideration of the sum of Ten Dollars, we, the said Rosetta F. Prettyman, Eliza F. Kilgour, Anna M. Magruder and Hugh S. Magruder, her husband; Forrest J. Prettyman and Elizabeth R. Prettyman, his wife, Lydia F. Prettyman, Albert J. Almoney, and Mary B. Almoney, do grant and convey unto the said Lydia Almoney Brunett and J. Paul Brunett, her husband, all that lot, piece or parcel of land situate, lying and being in Montgomery County, in the State of Maryland, which is described

follows:-

Beginning at a point distant four hundred and forty four and sixty hundredths (444.67) feet from the end of the first line of a deed from Anne M. Johnson to Elijah B. Prettyman dated November 4th, A.D. 1867 and duly recorded among the Land Records of said County in Liber E.B.P. No. 4, folio 342, said point being also the beginning of a deed from Rosetta V. Prettyman and others to Forrest J. Prettyman, and running thence reversely with said line North forty five minutes West seventy five feet; thence South eighty nine degrees fifteen minutes West one hundred and thirteen and twenty one hundredths feet to the East edge of Van Buren Street Extended, thence South forty five minutes East seventy five feet, thence with Forrest J. Prettyman's North line North eighty nine degrees fifteen minutes East, one hundred and thirteen and twenty one hundredths feet to the beginning; according to a survey made by Charles J. Maddox, County Surveyor in 1922.

Together with a right of way along the West line of the land above described for its entire length over the land still belonging to the grantors, which would lie within the lines of Van Buren Street in said Town of Rockville, if said Street were produced for said distance.

Subject to the following covenants to run with the title to the land hereby conveyed, to wit:

That no building shall be erected upon said lot, save for residence purposes, and such outbuildings as may be reasonably necessary in connection therewith and that such residence shall not cost less than Four Thousand Dollars.

Together with all and singular the buildings and improvements thereto and all the rights, roads, ways, waters, privileges, advantages and appurtenances to the same belonging, or in anywise thereunto appertaining.

And we, the said Rosetta V. Prettyman, Eliza P. Kilgour, Anna M. Magruder and Hugh S. Magruder, her husband, Forrest J. Prettyman and Elizabeth R. Prettyman, his wife, Lydia F. Prettyman, Albert J. Almonee and Mary B. Almonee, covenant to warrant generally the lands and premises hereby conveyed, and to execute any and all such further or other assurances as may be requisite or necessary the better to convey the same as aforesaid.

Witness our hands and seals.

Witness: _____	Rosetta V. Prettyman	(Seal)
Mary Louise Yearley	Eliza P. Kilgour	(Seal)
Maudie E. Hodges	Anna M. Magruder	(Seal)
Maudie E. Hodges	Hugh S. Magruder	(Seal)
A.E. Williams	Forrest J. Prettyman	(Seal)
A.E. Williams	Elizabeth R. Prettyman	(Seal)
Witness: L.P.P. - A.J.A. - M.B.A.	Lydia F. Prettyman	(Seal)
Mary Louise Yearley	Albert J. Almonee	(Seal)
	Mary B. Almonee	(Seal)

State of Maryland, Montgomery County, to wit:

I hereby certify that on this 11th day of February in the year nineteen hundred and twenty three, before the subscriber, a Notary Public of the State of Maryland, in and for Montgomery County, personally appeared Rosetta V. Prettyman, widow, Elise P. Kilgour, widow, Lydia V. Prettyman, unmarried, Albert J. Almoney and Mary B. Almoney, unmarried, and did each acknowledge the foregoing and annexed deed to be their respective act and deed.

Given under my hand and notarial seal this 11th day of February, A.D. 1923.

Mary Louise Iearley

Mary Louise Iearley

Notary Public

Notary Public

Rockville, Montg.

Co., Md.

State of Maryland, Baltimore City, to wit:

I hereby certify that on this 8th day of February, in the year nineteen hundred and twenty three, before the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared Anna M. Magruder and Hugh S. Magruder, her husband, and did each acknowledge the foregoing and annexed deed to be their respective act and deed.

Given under my hand and Notarial seal this 8th day of February A.D. 1923.

Maude E. Hodges

Notary Public

Maude E. Hodges

My Commission expires May 1, 1924.

Notary Public

Baltimore, Md.

State of Tennessee, Knox County, to wit:

I hereby certify that on this 2nd day of February in the year nineteen hundred and twenty three, before the subscriber, a Notary Public of the State of Tennessee, in and for Knox County, personally appeared Forrest J. Prettyman and Elizabeth B. Prettyman, his wife, and did each acknowledge the foregoing and annexed deed to be their respective act and deed.

Given under my hand and notarial seal this 2nd day of February A.D. 1923.

Alice E. Williams

Notary Public

Alice E. Williams

My Commission expires Feb. 7, 23.

Notary Public

Knox County, Tenn.

At the request of E. Gordon Van Franken the following Deed was recorded February 28th, A.D. 1923 at 11.30 o'clock A.M. to wit:

No. 14 NW

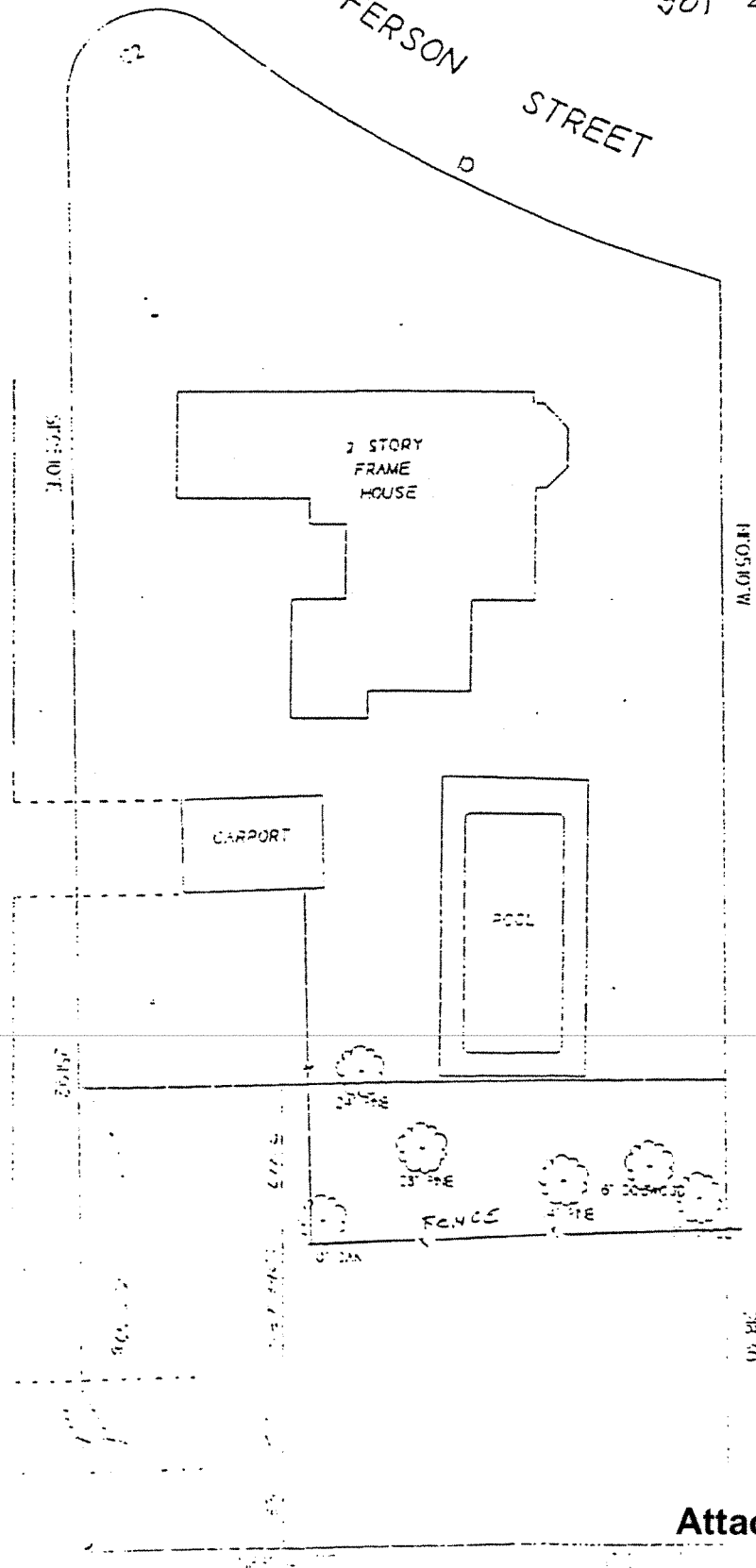
This Indenture, made the eleventh day of January in the year of our Lord one thousand nine hundred and twenty-three between Louis B. Moss and Wortley M. Moss, his wife,

1" = 30'

104 JEFFERSON STREET

J.R. LAW Property  
501-279-0990  
301-881-2646

100 S. VAN BUREN STREET



In the matter of Final Record  
Plat Application No. PLT98-0154  
John R. Law, Applicant

: BEFORE THE CITY OF  
: ROCKVILLE  
: PLANNING COMMISSION

### DECISION

The Applicant, Dr. Law, has submitted this Final Record Plat request for a two lot residential subdivision within the West Montgomery Avenue Historic District. Dr. Law currently resides at the subject property located at the intersection of S. Van Buren Street and Jefferson Street. The property is improved with an historic residence known as the Johnston-Prettyman house, which was originally built between 1841 and 1842. Dr. Law proposes to divide his 27,535 square foot lot into two unequal lots. The larger lot would be 18,479 square feet in size with more than 100 feet of frontage on W. Jefferson Street and over 170 feet of frontage on S. Van Buren Street; it would encompass the Johnston-Prettyman house and other existing improvements, including a carport and in-ground pool. The proposed smaller lot is 9,056 square feet in size with 80 feet of frontage along S. Van Buren Street; it encompasses the unimproved area to the rear of the house, which will be developed with a new in-fill dwelling.

This Final Record Plat Application No. PLT98-0154 came before the Planning Commission as an agenda item on December 16, 1998. An identical subdivision application (PLT98-0150) came before the Planning Commission on October 21, 1998 and was denied when a motion to approve failed on a 2-2 vote.<sup>1</sup> The Commission has been advised that an appeal from that earlier denial has been filed with the Circuit Court, but that the appeal has been stayed pending the Commission's action on the current application.

The Commission received a December 8, 1998 letter from Van Canada, an attorney representing Dr. Green, a resident of South Van Buren Street. Mr. Canada objected to the Commission's consideration of this application on the grounds that there is no substantive difference between it and the prior Application No. PLT98-0150, and claimed that the Commission can not alter its earlier action in Application No. PLT98-0150 in the absence of fraud, surprise, mistake or inadvertence. Mr. Canada also asserted that the Commission has no jurisdiction to entertain this current application because of the pending appeal of the earlier identical application. In response to Mr. Canada's objections, the Commission received a December 10, 1998 letter from Nancy M. Floreen, the attorney for the Applicant. Ms. Floreen asserts that this Application No. PLT98-0154 was filed because "erroneous and incomplete information" was previously before the Commission. Dr. Law's attorney further represented that additional information would be presented to the Commission in support of the application.

The Commission determined that since allegations of prior error and new information have been made this application could not summarily be rejected, and decided to allow Dr. Law an opportunity to establish prior error or new information in support of this current application.

---

<sup>1</sup> The Planning Commission's Rules of Procedure provides that "[f]ailure to receive a majority vote for approval constitutes denial."

However, in the interest of time and efficiency the Commission incorporated into the record of this Application PLT98-0154 all of the material pertaining to the previous Application No. PLT98-0150, including, but not limited to, the audio tape of that portion of the October 21, 1998 Planning Commission meeting addressing PLT98-0150, all materials submitted to the Commission at that earlier meeting, plus Dr. Law's Request for Reconsideration of Application No. PLT98-0150 (October 28, 1998 letter from Nancy M. Floreen, attorney for Dr. Law)<sup>2</sup>

The Commission requested that the Applicant and other interested persons limit their presentation and comments to new information and not to repeat comments previously made in connection with the earlier Application No. PLT98-0150.<sup>3</sup>

Much of the discussion at the October 21, 1998 consideration of Application No. PLT98-0150 focused on the applicability of Section 25-749(b) of the Rockville Zoning Ordinance, which reads as follows:

*Section 25-749(b). Resubdivision of existing lots*

In any resubdivision of developed or undeveloped lots within an existing residential area, the Commission shall maintain, to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed resubdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots are smaller than the minimum requirements of the zone, in which case the minimum requirements shall apply.

The Commission had the following information at its October 21, 1998 meeting: The Historic District in which the subject property is located is an eclectic area with both large and small lots. A significant number of large lots are located on the east side of S. Van Buren Street, in the immediate vicinity of the Applicant's property. The average lot size within 500-feet of the proposed subdivision is approximately 14,430 square feet, and the proposed smaller 9,056 square foot lot does not meet that average. At the October 21, 1998 meeting there was substantial opposition from residents in the immediate area to the subdivision of the Applicant's large lot. Many residents expressed the opinion that the creation of another small lot, approximately 9,000 square feet in size, would destabilize the neighborhood and change the character of the area, particularly the character of S. Van Buren Street.

---

<sup>2</sup> The Commissioners who did not participate in the consideration of Application PLT98-0150 reviewed all of the material pertaining to that application.

<sup>3</sup> Public hearings are not required for subdivision applications. As in all subdivision applications, Application PLT98-0150 was placed on the Planning Commission's agenda. In accordance with Planning Commission practice, the Commission allowed interested persons to comment on the application. However, no formal "public hearing" was held, and none was required. Similarly, comments were received on pending Application PLT98-0154, but no "public hearing" was held.

Application No. PLT No. 98-0150 was denied by the Commission when it failed to receive a majority vote of approval. Those Commission members voting against the motion to approve shared the neighbors concerns that it was inappropriate to subdivide this parcel as proposed.

This current application is identical to the earlier Application PLT98-0150 in regard to the number, size, shape, and location of the lots to be created. In support of the current Application No. PLT98-0154 the Applicant presents one new fact, additional legal argument on the applicability of Section 25-25-749(b), and some supplemental facts.

The only new fact presented by the Applicant is that he plans to reside in the new house to be built on the smaller lot, whereas in connection with the earlier application Applicant proposed to sell both lots and move out of the neighborhood. Whether or not the Applicant resides in the subdivision is wholly irrelevant to the planning analysis of a proposed subdivision and in no way distinguishes the current application from the earlier, denied application.

The Applicant also argues that the Planning Commission was in error when it applied Section 25-749(b) of the City's Zoning Ordinance to his proposed subdivision. The Applicant has consistently asserted that Section 25-749(b) only applies to resubdivision of previously platted subdivisions and not to the subdivision of lots created by deed. At the December 16, 1998 meeting the Applicant presented information establishing that his property was never the subject of a subdivision plat. This, however, is not new information. The Commission was already aware of this fact, as it had information in connection with the earlier application that the Applicant's property was a developed unrecorded lot created by deed, that was once part of a larger lot.

Section 25-749(b) does not expressly limit its applicability to resubdivision of "platted" lots. The City Zoning Ordinance does not define "resubdivision" but does define "subdivision" as a "...division of ....land" and includes a "resubdivision." Moreover, Planning Staff has applied this section to applications for the subdivision of both platted and unplatted lots. The Commission finds that the Applicant has presented no new information or argument with respect to the issue of the applicability Section 25-749(b) to the current subdivision application that would warrant disturbing the Commission's earlier action on the identical subdivision application. The Applicant has failed to persuade the Commission that Section 25-749(b) does not apply in this case.

Finally, the Applicant maintains that even if Section 25-749(b) applies, the proposed subdivision does not violate that section because there exist a number of other small lots in the area. In connection with this current Application No. PLT98-0154, the Applicant has provided the Commission with a listing of specific properties within 500 feet of the subject property with lot sizes equal to or smaller than 9,000 square feet. This information may provide more detail, but it is not significantly different from the information presented by Planning Staff in connection with our consideration of Application No. PLT98-0150. The Planning Staff earlier had informed the Commission that there were a number of small properties in the area. Indeed, the Staff relied on the existence of those smaller lots in recommending approval of the earlier Application No. PLT98-0150. The Commission, however, disagreed with Staff, and focused instead on the

existence of the larger lots, and the need to preserve large lots in the area and not to create more small lots.<sup>4</sup>

For the second time, the Applicant has failed to persuade the Commission that it should permit the creation of a lot in the Historic District that is substantially smaller than the average lot size in an area prized for its large lots.

Under the Commission's procedures the failure of Application No. PLT98-0150 to obtain a majority vote for approval constituted a denial by the Commission. The integrity of Commission actions must be respected, and its earlier action on this identical subdivision application should not be disturbed unless error can be established or a change in the Commission's decision can be justified by new information. For the reasons articulated above, the Commission finds that Applicant has failed to present any new information or argument that is substantially different from Application No. PLT98-0150, and has failed to demonstrate that the Commission's prior action in denying Application No. PLT98-0150 was in error.

The Commission concludes that there exists no basis for rendering a decision on this Application PLT98-0154 that would be inconsistent with the Commission's earlier denial of an identical Application No. PLT98-0150. Therefore, the Final Record Plat Application No. PLT98-0154 is denied.

The date of this Decision for purposes of appeal is December 23, 1998.

City of Rockville Planning Commission

By:

  
Donald Boebel, Chairman

---

<sup>4</sup> This was consistent with the concerns expressed by Commissioner Noble of the Historic District Commission that subdivision of original large lots over time would change Rockville's historic character of a country town with large house lots to an urban environment. (See September 25, 1998 letter to the Planning Commission from Judith A. Christensen, HDC Staff Liaison.)

CVS 961018

Civil INFORMATION CASE #195577 AS OF 09/22/99 12:49 165  
JOHN R LAW VS. CITY OF ROCKVILLE PLANNING COMMISS

---

D O C K E T I N F O R M A T I O N

CASE#: 195577 CASE TYPE: Civil Reference Case: (none)

07/01/1999 #21 KG  
HEARING ON PETITIONER'S PETITION FOR JUDICIAL REVIEW (#1) (MASON, J.)  
TAKEN UNDER ADVISEMENT.  
JUDGE: M MASON  
TYPE: DOCKET  
TAPE#: 08-070199 START#: 129.6 STOP#: 305.7 #TAPES: 1

08/23/1999 #22 AS  
OPINION AND ORDER OF COURT (MASON, J.) THAT THE DECISION OF THE  
COMMISSION SHALL BE REVERSED, AND REMANDED FOR FURTHER PROCEEDINGS  
CONSISTANT WITH THIS OPINION, ENTERED. (COPIES MAILED)  
JUDGE: M MASON  
TYPE: DOCKET

09/29/1999 #23 AS  
ADMINISTRATIVE RECORD, COPY OF OPINION AND ORDER, AND CERTIFIED COPY  
OF DOCKET ENTRIES HAND DELIVERED TO THE ROCKVILLE CITY PLANNING  
COMMISSION.  
TYPE: DOCKET

D O C K E T I N F O R M A T I O N

CASE#: 195577 CASE TYPE: Civil

Reference Case: (none)

02/11/1999 #11

AS  
NOTICE OF FILING PETITION FOR JUDICIAL REVIEW AND CERTIFICATE OF  
COMPLIANCE RECEIVED FROM THE CITY OF ROCKVILLE PLANNING COMMISSION,  
FILED.  
TYPE: DOCKET

03/08/1999 #12

AS  
ADMINISTRATIVE RECORD AND TRANSCRIPT RECEIVED FROM THE CITY OF  
ROCKVILLE PLANNING COMMISSION, FILED. (1 EXLARGE ENVELOPE, AND 1  
ROLLED CHART, REMOVED AND PLACED IN EXHIBIT ROOM)  
TYPE: DOCKET

03/11/1999 #13

AS  
NOTICE UNDER MARYLAND RULE 7-206(e) MAILED TO ALL PARTIES.  
TYPE: DOCKET

03/11/1999 #14

PW  
PLAINTIFF'S STIPULATED BRIEFING SCHEDULE, FILED. (LP)  
TYPE: DOCKET

03/29/1999 #15

AS  
ORDER OF COURT (MASON, J.) THAT THE MAYOR AND COUNCIL OF ROCKVILLE IS  
HEREBY PERMITTED TO INTEREVEENE IN THIS CASE AS A RESPONDENT, ENTERED.  
(COPIES MAILED)  
JUDGE: M MASON  
TYPE: RULING STATUS: GRANTED MOTION: 4

04/15/1999 #16

KG  
PLAINTIFF'S MEMORANDUM ON APPEAL AND ATTACHMENTS FILED.  
TYPE: DOCKET

05/17/1999 #17

KG  
DEFENDANT CITY OF ROCKVILLE PLANNING COMMISSION'S MEMORANDUM OF APPEAL  
AND ATTACHMENTS FILED. (ATTACHMENTS FILED ON CASE #194485)  
TYPE: DOCKET

05/21/1999 #18

KG  
DEFENDANTS' MEMORANDUM ON APPEAL AND ATTACHMENTS FILED.  
TYPE: DOCKET

06/10/1999 #19

KG  
PLAINTIFF'S REPLY TO THE RESPONDENTS' MEMORANDA FILED. (LP)  
TYPE: DOCKET

06/24/1999 #20

VM  
JUDGE MASON'S MEMORANDUM TO ASSIGNMENT COMMISSIONER FILED. (LP)  
TYPE: DOCKET

D O C K E T I N F O R M A T I O N

CASE#: 195577 CASE TYPE: Civil Reference Case: (none)

01/04/1999 #1 AS  
PETITIONER'S PETITION FOR JUDICIAL REVIEW, FILED.  
TYPE: DOCKET

01/04/1999 #2 AS  
NOTICE SENT ON 01/05/1999 GIVING NEW CASE NUMBER TO ALL PARTIES.  
TYPE: DOCKET

01/05/1999 #3 AS  
COPY OF PETITION FOR JUDICIAL REVIEW MAILED BY CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED TO THE CITY OF ROCKVILLE PLANNING COMMISSION.  
TYPE: DOCKET

01/12/1999 #4 SG  
MAYOR AND COUNCIL OF ROCKVILLE'S MOTION TO INTERVENE AS DEFENDANT AND  
POINTS AND AUTHORITIES FILED. (L/P)  
JUDGE: M MASON  
TYPE: MOTION STATUS: GRANTED RULING: 15

01/25/1999 #5 AS  
JOINT MOTION TO CONSOLIDATE THIS CASE WITH CIVIL ACTION 194485, FILED.  
(LP)  
JUDGE: M MASON  
TYPE: MOTION STATUS: GRANTED RULING: 7

01/28/1999 #6 AS  
JUDGE MASON'S NOTICE OF FILINGS TIMETABLE AND FINAL HEARING DATE  
(6/24/1999, 9:00 AM), FILED.  
TYPE: DOCKET

02/04/1999 #7 AS  
ORDER OF COURT (MASON, J.) THAT THIS CASE IS CONSOLIDATED WITH CIVIL  
NO. 194485, FILED. (COPIES MAILED)  
JUDGE: M MASON  
TYPE: RULING STATUS: GRANTED MOTION: 5

02/04/1999 #8 AS  
JUDGE MASON'S MEMORANDUM TO THE ASSIGNMENT COMMISSIONERS, FILED.  
TYPE: DOCKET

02/04/1999 #9 AS  
DEFENDANT CITY OF ROCKVILLE PLANNING COMMISSION'S RESPONSE TO PETITION  
FILED.  
TYPE: DOCKET

02/05/1999 #10 AS  
NOTICE OF HEARING DATE FILED AND MAILED. (HEARING DATE: 06/24/1999)  
TYPE: DOCKET

TRIAL ELECTION : COURT

Status: CLOSED

as of: 08/23/1999  
TRACK: 0

P JOHN R LAW  
100 SOUTH VAN BUREN ST  
ROCKVILLE, MD 20850

11/11/1111 NANCY M FLOREEN  
401 E. JEFFERSON ST #203  
ROCKVILLE, MD 20850  
PHONE# (301) 340-3055

7015

-VS.-

D CITY OF ROCKVILLE PLANNING COMMI 02/04/1999  
111 MARYLAND AVENUE  
ROCKVILLE, MD 20850

SONDRA H BLOCK  
ROCKVILLE CITY HALL  
111 MARYLAND AVENUE  
ROCKVILLE, MD 20850  
PHONE# (301) 309-3320

2840

PAUL T GLASGOW 427  
VENABLE, BAETJER AND HOWARD, L  
111 MARYLAND AVENUE  
ROCKVILLE, MD 20850  
PHONE# (301) 309-3320

D MAYOR AND COUNCIL OF ROCKVILLE  
UNKNOWN  
UNKNOWN, 99998

02/04/1999 SONDRA H BLOCK  
ROCKVILLE CITY HALL  
111 MARYLAND AVENUE  
ROCKVILLE, MD 20850  
PHONE# (301) 309-3320

2840

PAUL T GLASGOW 427  
VENABLE, BAETJER AND HOWARD, L  
111 MARYLAND AVENUE  
ROCKVILLE, MD 20850  
PHONE# (301) 309-3320

C H A R G E S

#01 ADMINISTRATIVE APPEAL

COSTS	COUNTY MAKER	DATE	ASSESSED	STATUS	DATE	PAID	STATUS
-------	--------------	------	----------	--------	------	------	--------

Filing		01/04/1999	\$90.00	01/04/1999		\$90.00	Paid
--------	--	------------	---------	------------	--	---------	------

DATE	SCHEDULED EVENT
07/01/1999	ORAL HEARING

PLDG	TIME	JUDGE	LENGTH
	10:00	MASON, MICHAEL	

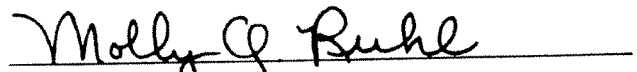
STATE OF MARYLAND  
COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of  
DOCKET ENTRIES IN

No. 195577 Civil, truly taken and copied from the record of proceedings  
in the Circuit Court for Montgomery County, Maryland, in the foregoing case.



In Testimony Whereof, I have hereunto subscribed my name  
and affixed the seal of the Circuit Court for Montgomery  
County this 29th day of September, A.D. 1999.

  
MOLLY Q. RUHL  
*Clerk of the Circuit Court for Montgomery County*

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITION OF JOHN R. LAW

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE ROCKVILLE  
CITY PLANNING COMMISSION

IN THE CASES OF:  
FINAL RECORD PLAT PLT98-0150  
AND  
FINAL RECORD PLAT PLT98-0154

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Civil Action Nos. 194485  
and  
Civil Action No. 195577  
(Consolidated)

OPINION AND ORDER

For purposes of its opinion, the court will focus on the proceedings in the case of Final Record Plat PLT98-0154 since the court's decision in that case will of necessity resolve the issues on appeal in PLT98-0150.

Since the court is well aware that the parties are anxious for a decision, the court will not engage in any long discussion of the facts or law except as may be necessary to explain its decision. The facts, as well as the law applicable, are set out in great detail in the Petitioner's and Respondent's Memorandum on Appeal.

It is sufficient to point out that the Petitioner, Dr. John R. Law (hereinafter Dr. Law), petitioned to subdivide, or re-subdivide, depending upon your point of view, his property into two parcels. Because there are historic structures on the property, rather than seeking to divide the parcel into two equal lots, he seeks to divide the property into two unequal lots. The larger lot would contain the historic structures and would by all accounts preserve the historic character of those buildings and grounds. The remaining lot would be larger than many lots in the vicinity, but would not comply with the strict requirements of Rockville Code Section 25-749 (b).

Attachment 8-7

ENTERED

AUG 23 1999

Clerk of the Circuit Court  
Montgomery County, Md.

ENILED

AUG 23 1999

Clerk of the Circuit Court  
Montgomery County, Md.

The Commission after a hearing determined that Dr. Law's petition constituted a re-subdivision as opposed to a subdivision of his property and therefore, Section 25-749 (b) applied. They further determined that the proposed re-subdivision did not meet the requirements of that section because the smaller of the two lots was not equal to the average in area or in frontage of existing lots within 500 feet of the proposed re-subdivision. Accordingly, they denied the petition. From that decision, the petitioner appeals.

In the court's view, the petition presents two questions on review:

1. Did the Rockville Planning Commission correctly interpret the law in finding that Dr. Law's petition involved a re-subdivision to which Section 25-749 (b) applied?
2. Assuming that the Commission correctly determined that Dr. Law's petition was one to re-subdivide, must their decision nevertheless be reversed for the Commission's failure to make any findings about the feasibility of the re-subdivision conforming to the average area and frontage of lots within 500 feet under Section 25-749 (b)?

The Court answers both questions in the affirmative. Certainly, as is apparent from the memoranda of both counsel, the Rockville City Code is not a model of clarity, particularly as it relates to the issue before the court. In a nutshell, the petitioner argues that Section 25-749 (b) applies only to platted subdivisions. The respondent argues that no such limitation can be found within the Code. Without that restriction, the petitioner urges that the term subdivision and re-subdivision become synonymous and it is meaningless to have statutory provisions that on their face apply only to re-subdivisions. While certainly the petitioner's argument has a great deal of logical appeal, the court ultimately comes to the conclusion that the statute is clearly ambiguous. Because of that, great weight must be given to the Planning Commission's interpretation of the statute, since they are the agency charged with the duty of executing it. *Holy Cross Hospital of*

ENIEHD

AUG 23 1999

Clerk of the Circuit Court  
Montgomery County, Md.

*Silver Spring, Inc. v. Health Services Cost Review Commission*, 283 Md. 677 (1978). While the Staff of the Planning Commission initially expressed some question about whether or not they thought that the instant petition was a re-subdivision, they ultimately concluded that it was. They specifically noted that the Commission Staff "has historically applied Section 25-749 (b) to evaluate the appropriateness of pipestem lots. In doing so, staff has made no distinction between subdivision of previous platted lots and subdivision of lots created by deed." Staff Report and Recommendations, December 11, 1998, Record Document No. 42. The court also considers what the legislature intended. Certainly, to accept the petitioner's interpretation would mean that these requirements would be inapplicable to many historic districts where lots are created or may be created by deed as opposed to recorded plats. There is no suggestion that the court has seen that the legislature intended to exempt such areas from application of this section.

For the foregoing reasons, the court concludes that the Commission was correct as a matter of law in determining that Dr. Law's petition involved a re-subdivision and not simply a subdivision.


Although the court concludes that the Commission correctly determined that the petition involved a re-subdivision, the court nevertheless finds that the decision of the Commission must be reversed and remanded for further action by the Commission consistent with this Opinion. Section 25-749 (b) clearly vests the Commission with some discretion. The Commission is charged with the responsibility to maintain "**to the extent feasible**, the average area and frontage of existing lots within 500 feet of the proposed re-subdivision." The court is unable to determine from a review of the Commission's Opinion, how or whether they determined that strict adherence to the guidelines set out in 749 (b) was feasible in this case given the unique historic significance of the structures situated on Dr. Law's lot.

ENTERED

AUG 23 1999

Clerk of the Circuit Court  
Montgomery County, MD.

Respondents state in their memorandum that it is "undisputed . . . that petitioner's property is large enough to create two lots that each approximate the average size of the lots within a 500 foot radius." Memorandum, page 20. In other words, the respondents suggest that strict adherence to 25-749 (b) is feasible in this case because the petitioner could simply divide his property into two equal lots. Perhaps this is what the Commission found when it arrived at its decision, but if so, that information is contained nowhere within their Opinion. Further, if that is what the Commission means, the Commission needs to address the issue of whether creating two such lots is feasible in light of the petitioner's efforts to preserve the historic character of the structures existing on the property. In other words, Dr. Law is entitled to know if the Commission thinks it is feasible to require strict adherence to Section 25-749 (b) and if so, how it is feasible given the unique historic nature of the structures on the property. If the Commission has no concern about these structures and feels that they do not represent an impediment to strict compliance to 25-749 (b), they should so state. Alternatively, if the Commission feels the historic structures have value and would be adversely affected if the property were subdivided in strict compliance with 25-749 (b), then the Commission needs to decide whether it is nevertheless "feasible" to apply those strict requirements in this case. There is no indication from the record that they even considered this issue. Accordingly, the decision of the Commission shall be reversed and remanded for further proceedings consistent with this Opinion.

8/20/99  
  
MICHAEL D. MASON, JUDGE  
Circuit Court for Montgomery County, MD.



City of Rockville

## MEMORANDUM

October 21, 1999

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Final Record Plat Application PLT98-0150 and PLT98-0154, Dr. John Law, Applicant

The above referenced Final Record Plat applications were previously considered by the Commission and denied. The Commission actions were appealed to the Circuit Court for Montgomery County which remanded the proposed subdivision to the Commission for further consideration and findings.

The two applications are identical and involve a proposed two-lot subdivision at 100 South Van Buren Street. The subject property is located within the West Montgomery Avenue Historic District and is currently improved with the historic Prettyman House. The proposed subdivision would create a larger lot in excess of 18,000 square feet fronting West Jefferson Street and a smaller approximately 9,000 square foot lot fronting South Van Buren Street. The larger lot would include the Prettyman House and existing in-ground pool, and carport; the smaller, vacant lot would be available for development.

Only four members of the commission were present when application PLT98-0150 was considered on October 21, 1998. That application was denied when a motion for approval failed on a 2-2 vote. Subsequently application PLT98-0154 was filed by the applicant in an attempt to persuade the Commission that Section 25-749 (b) of the Zoning Ordinance, which became an issue in the first application, did not apply to his proposed subdivision. That second application was denied when the Commission determined that the applicant did not provide new information or prove that erroneous information had been considered during the previous proceedings. That denial was also appealed to the Circuit Court and consolidated with the earlier appeal.

The interpretation and application of Section 25-749 (b) of the City of Rockville Zoning and Planning Ordinance was a central issue in Applicant's appeal. That section reads as follows:

*Resubdivision of existing lots.* In any resubdivision of developed or undeveloped lots within an existing residential area, the Commission shall maintain, to the extent feasible, the average area and frontage of existing lots within five hundred

(500) feet of the proposed subdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots is smaller than the minimum requirements of the zone, in which case the minimum shall apply.

In his appeal, the Applicant contended that Section 25-749 (b) of the City of Rockville Zoning and Planning Ordinance did not apply to his application because it was not a resubdivision but rather a first time subdivision. In an Opinion and Order, Judge Mason found that the Commission had correctly determined that the application involved a re-subdivision to which Section 25-749 (b) could apply. However, the Court could not find that the Commission had made any determination as to whether strict adherence to that section "was feasible in this case given the unique historic significance of the structures situated on Dr. Law's lot." The Court, therefore, reversed the decision of the Commission and remanded the application to the Commission to address the "feasibility" standard of Section 25-749 (b).

As directed by the Court, the Commission's task now is to make specific findings as to whether Applicant's subdivision proposal maintains *to the extent feasible*, the average area and frontage of existing lots within five hundred (500) feet of the proposed subdivision "given the unique historic significance of the structures situated on Dr. Law's lot."

Staff concurs with Judge Mason's observation that the language of Section 25-749 (b) "clearly vests the Commission with some discretion." Indeed, when the Commission considered Text Amendment (T-110-90) creating Section 25-749 (b) it requested that the City attorney include "appropriate language to allow the Commission some discretion in the application of this section." Staff has determined that discretion and flexibility is required in applying the minimum area requirements of Section 25-749 (b) to the subject application in light of the character of the surrounding neighborhood.

The earlier staff reports (copies attached) calculated the estimated average area and frontage of existing lots within 500 feet of the proposed subdivision (the "neighborhood"). As noted in those reports, the proposed larger lot exceeds the average area and frontage, while the smaller lot equals the average frontage but is smaller than the average lot area. Staff further noted that the subject neighborhood is eclectic with no uniformity in lot sizes and includes both small and large lots. The Introduction to the adopted "Neighborhood Plan for the West End" similarly observes that "the result of the patchwork development pattern and variety of architectural styles is a unique neighborhood, recalling both the small town of the past and the growing city of today." Therefore, the average lot size of approximately 14,000 square feet is a somewhat artificial number that reflects neither the diversity of lot sizes nor the unique character of the neighborhood.

Although the Applicant's existing lot is large enough to divide into two equal lots that would come close to meeting the average lot size in a 500 foot area, such a subdivision would negatively impact the historic Prettyman house and its surroundings. Such an even division of the subject property would not only require the removal of an in-ground pool and carport that are around 50 years old, it would likely result in a significant reduction, if not destruction, of the garden setting and open space that frames the Prettyman house and provides and maintains a necessary buffer between the historic house and other structures and enhances the streetscape along South Van Buren Street. In addition, the creation of a lot on South Van Buren Street that approximates 14,000 square feet will invite, for economic reasons, the construction of a larger home than could be constructed on the proposed 9,000 square foot lot, which would further threaten the historic charm and character of the Prettyman house and surrounds.

Applicant's proposed subdivision, however, does not have these negative impacts on the existing historic house or the Historic District. (See the attached recommendation of the Historic District Commission) The proposed smaller lot fronting South Van Buren Street would maintain an appropriate landscaped buffer between the Prettyman House and any new development on the lot. The lot's smaller size would also restrict the size of any house that could be built there. Moreover, since the proposed smaller lot is equal in size to many lots in the area, it would be consistent with, and not adversely affect, the eclectic character of the neighborhood. Therefore, Staff does not believe that enlarging the lot fronting South Van Buren Street to more closely approximating the "average" lot size within a 500 foot area materially benefits or protects the neighborhood so as to warrant or justify the resulting negative impact on the Prettyman house and the Historic District. Staff concludes that the strict application of the area requirements of Section 25-749 (b) is not feasible in light of the probable adverse impacts on the historic structure and surrounding area that would result from such strict application.

Staff has consistently supported this application and continues to do so for the reasons set forth herein and in its prior reports to the Commission. Staff, therefore, recommends that, for the reasons stated above and identified in the prior staff reports, the Commission find that the application maintains, to the extent feasible the average area and frontage of existing lots within five hundred (500) feet of the proposed subdivision and satisfies all of the developments standards and subdivision regulations of the Zoning Ordinance.

Attachment



City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20850-2364

Community Planning and  
Development Services  
(301) 309-3200  
TDD (301) 309-3187  
FAX (301) 762-7153

Inspection Services  
(301) 309-3250

Planning Division  
(301) 309-3200

Landlord Tenant  
(301) 309-3200

November 18, 1999

Dr. John Law  
100 South Van Buren Street  
Rockville, Maryland 20850

Re: Final Record Plats PLT98-0150 and PLT98-0154,  
100 South Van Buren Street

Dear Dr. Law:

At its meeting of October 27, 1999, the City of Rockville Planning Commission reviewed and approved with conditions the above referenced Final Record Plats. This action follows the reversal by the Circuit Court for Montgomery County, Maryland of an earlier statutory denial by the Commission of the same plat applications.<sup>1</sup> The Court remanded the matter to the Commission with instructions to make findings as to whether the proposed subdivision maintained "to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed resubdivision" as required by the provision of Section 25-749 (b) of the City's Zoning Ordinance. That section reads as follows:

*Resubdivision of existing lots.* In any resubdivision of developed or undeveloped lots within an existing residential area, the Commission shall maintain, to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed subdivision. This requirement shall supersede the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots is smaller than the minimum requirements of the zone, in which case the minimum shall apply.

This letter will discuss in some detail the evidence before the Commission and the Commission's findings.

Record before the Commission.

The record before the Commission consists of the following:

- (a) All the material previously submitted in connection with these two plat applications, including the Historic District Commission's recommendation, Staff Reports dated October 16, 1998 and December 11, 1998 recommending approval of the applications, and the transcript of the meetings on October 21, 1998 and December 16, 1998 at which Final Record Plats PLT98-0150 and PLT98-0154, respectively were considered.

<sup>1</sup> The earlier applications failed to receive a majority vote for approval which constituted a denial under the Commission's procedures.

Attachment 10-1

- (b) The Circuit Court decision dated August 20, 1999 holding that Section 25-749 (b) of the City's Zoning Ordinance applied to the subject proposed subdivision and remanding the subdivision application to the Commission for further findings.
- (c) Letters received in support of and in opposition.
- (d) Staff Memorandum dated October 21, 1999 recommending approval of the application.
- (e) The presentation of Staff and the Applicant and the comments of citizens made at the Commission's October 27, 1999 meeting.

Facts

The following facts were before the Commission:

The subject property is 27,535 square feet and is zoned R-90. The property is located within the West Montgomery Avenue Historic District and is currently improved with the historic Prettyman House, an in-ground pool, carport, and landscaping. The proposed subdivision would create a larger lot 18,479 square feet in area fronting West Jefferson Street and a smaller 9,056 square foot lot fronting South Van Buren Street. The larger lot would include the Prettyman House, the pool, and carport; the smaller, vacant lot would be available for development.

The Historic District Commission found that the proposed subdivision would not adversely impact the historic property or the West Jefferson Street historic district streetscape. The Historic District Commission has review and approval authority over any house subsequently built on the smaller lot proposed by the subject application. Most of the properties surrounding the subject property on South Van Buren Street appear in the Historic Buildings Catalog as inventoried historic resources, but those properties on South Van Buren Street located directly across from, and to the south of, the proposed smaller lot are not located in the historic district.

The lots within 500 feet of the proposed subdivision have an estimated average frontage of 80-84<sup>2</sup> feet and an average area of between 12,000 and 14,000<sup>3</sup> square feet. If the subject property were to be divided equally it would create two lots, each approximately 13,767 square feet in area, with street frontages that would exceed the average frontage of properties located within 500 feet. The proposed subdivision meets the minimum lot requirements in the R-90 zone but the smaller lot does not meet the average area requirements of Section 25-749(b).

---

<sup>2</sup> City staff estimated the average frontage as 80 ft and the applicant's surveyor estimated the average frontage as 84 feet.

<sup>3</sup> City staff estimated the average lot size as 14,430 square feet and the applicant's surveyor estimated the average lot size as 12,300 square feet.

The R-90 side yard setback requirement is 11 feet. A variance has been granted to the property at 118 South Van Buren Street to the immediate south of the subject property, to permit the location of a garage within 4 feet of the property line shared with the subject property.

Recommendations of Staff

Staff recommended approval of the proposed subdivision as being the most appropriate division of the property in light of the historic house and related landscaping on the subject property. Staff concluded that an even division of the subject property would not only require the removal of an in-ground pool that is approximately 50 years old and the existing carport, it would also likely result in a significant reduction, if not destruction, of the garden setting and open space that frames the Prettyman house. Staff further concluded that the garden provides and maintains a buffer between the historic house and other structures and enhances the streetscape along South Van Buren Street. In addition, Staff advised the Commission that the creation of a lot fronting South Van Buren Street that approximates 14,000 square feet would likely encourage the construction of a larger home than could be constructed on the proposed 9,000 square foot lot, which would further threaten the historic charm and character of the Prettyman house and surrounds.

Staff concluded that the proposed subdivision had none of the above negative impacts on the existing historic house or the Historic District, as the proposed smaller lot fronting South Van Buren Street would maintain an appropriate landscaped buffer between the Prettyman House and any new development on the lot. The lot's smaller size would also restrict the size of any house that could be built there. Moreover, staff observed that the proposed smaller lot is equal in size to many lots in the area, and would therefore be consistent with, and not adversely affect, the eclectic character of the neighborhood. In light of the foregoing, Staff recommended that, based on the information contained in the October 16, 1998 and December 11, 1998 Staff Reports and in the October 21, 1999 Staff Memorandum, the Commission find that the strict application of the area requirements of Section 25-749 (b) is not feasible in light of the probable adverse impacts on the historic structure and surrounding area.

Comments from Applicant and Other Citizens.

The Commission heard comments from the applicant and several citizens supporting the proposed subdivision as protecting the historic Prettyman house and adjacent garden and trees, while also being consistent with the eclectic character of the neighborhood. Supporters emphasized that large lots were being further developed elsewhere in the surrounding neighborhood and that the Historic District Commission would have review and approval authority over any house that might be built on the smaller lot.

The Commission also heard comments from citizens who felt that City staff did not properly apply Section 25-749(b) to this proposed subdivision. They maintained that the

strict application of the average frontage and area requirements of Section 25-749 (b) should be applied to this subdivision and that the historic structure did not warrant a deviation from those requirements. Opponents also asserted that the proposed subdivision would be injurious to the neighborhood and therefore is in violation of section 25-727 (e)(5). Dr. Richard Green also maintained that the other homes in the neighborhood, while not in the historic district, were historic resources that would be adversely affected by the proposed subdivision.

In response to questions from Commissioners to staff and citizens, the following additional information was elicited: Some of the larger properties within 500 feet of the proposed subdivision consist of more than one deeded lot, while other properties, such as that owned by Dr. Green, have a lot width equal to or smaller than the smaller lot proposed by the subject subdivision application. In addition, as of the date of the commission's meeting, there had been no petition from those residing in the historically significant homes to have those homes included within the historic district.

#### Commission Discussion

After hearing the staff's presentation and comments from the applicant and interested citizens, the Commission discussed the feasibility of requiring the strict application of Section 25-749 (b) to this subdivision application in light of the historic structure on the subject property and the importance of maintaining the ambiance of the existing designated historic structure. The Commission also discussed the proposed subdivision's compliance with the requirements of Section 25-727, and the effects of potential future development of the proposed development lot. The Commission considered whether an equal division of the land, which would result in a subdivision that more closely met the requirements of Section 25-749 (b) was more appropriate than the proposed subdivision. The Commission also discussed whether the proposed subdivision was detrimental to the surrounding neighborhood and the role of the Historic District Commission in reviewing and approving any construction on the developable lot. The Commission also discussed the close proximity of the garage on the adjoining property to the property line and the desirability of maintaining a certain distance between that structure and any house built on the new lot.

A majority of the Commissioners concluded that the proposed subdivision better serves to protect and preserve the existing historic structure and surrounds than would an even subdivision of the property. The lot frontage of the proposed smaller lot, which equals more than 50% of the lot frontages in the neighborhood, was deemed to be more important to the South Van Buren Street streetscape than maintaining the average lot size in square footage. A minority of Commissioners concluded that the proposed subdivision, with its creation of a small lot would have a negative impact on, and be injurious to, the grouping of properties in the historically significant neighborhood along South Van Buren Street.

Findings of the Commission

Based on all of the information before it, the Commission made the following findings:

- (1) That, with respect to the requirements of Section 749(b), the proposed smaller lot does not meet the standard of the average area and frontage of existing lots within 500 feet of the proposed subdivision, but that the historic nature of the existing house warrants application of the discretion that section 25-749(b) gives the Planning Commission.
- (2) That the subdivision proposal maintains, to the extent feasible, the area and frontage, requirements of Section 25-749 (b) in light of the historic nature of the structures on the applicant's lot.
- (3) The Commission adopted the staff's findings contained in its December 11, 1998 staff report that the proposed subdivision satisfied the required findings contained in Section 25-727. Those findings are attached and include the finding that the proposed subdivision is not detrimental to the public welfare or injurious to property or improvements in the neighborhood.

Commission Action

On a motion by Commissioner Giammo, seconded by Commissioner Meyer, and approved by the Commission on a 3-2 vote, the Commission made the above findings and approved the Final Record Plat for the subdivision of a 27,535 square foot residential lot into two lots. The approval is subject to the following conditions:

1. That the Plat be revised to make modifications/additions as identified on Planning Commission Exhibit "A" (in Planning Division file). The plat shall also be revised to include a building restriction line of 17 feet on the southernmost side yard; and
2. That the final Plat be submitted in an appropriate electronic format as specified in Section 25-782(c), (d) and (e) of the City of Rockville Zoning Ordinance.


The Commission also urged the Historic District Commission to exercise its authority to the utmost to ensure that whatever house is built on the subject property conforms to the character of the houses in the nearby neighborhood. The Commission further recommended that the Historic District Commission notify and involve the residents of the neighborhood early in the approval process.

Dr. Law  
Page 6  
November 18, 1999

As soon as the above conditions have been satisfied and the plat is signed, reproduced and sealed, it will be recorded among the Land Records of Montgomery County by the City of Rockville.

Your attention is directed to Section 25-728(j) of the Zoning and Planning Ordinance, which specifies that this approval shall be revoked in the event that the final plat is not recorded within two (2) years after receiving approval. For good cause shown, two extensions, not exceeding one year each, may be granted by the Planning Commission.

By Direction of the City of  
Rockville Planning Commission

A handwritten signature in black ink, appearing to read 'RJS', with a long horizontal flourish extending to the right.

Robert J. Spalding  
Chief of Planning

a greater degree of sensitivity than just cutting the property in half and produces the same number of lots. The intent of Section 25-749(b) is to protect existing neighborhoods from uncharacteristic subdivision. In this case, the uneven division of the property seems to be in character with the eclectic character of the neighborhood, which consists of a variety of lot sizes.

While a preliminary plan is not required for three lots or less, the preliminary plan findings contained in Section 25-727 must be addressed. In order to approve a record plat, the Planning Commission must find that a proposed subdivision will not conflict with any of the findings. The following is a list of the findings as well as an evaluation of each:

**(1) Constitute a violation of any provision of this chapter or other applicable law;**

The proposed lots meet the minimum requirements for the R-90 zone. The intent of Section 25-749(b) is to create lots that are compatible with the surrounding neighborhood. Within 500 feet of the proposed subdivision are properties that are smaller as well as larger than the proposed lots. They are also intermingled with each other. In this case, unequally dividing the existing lot creates one lot that complies with the Development Standards of the R-90 zone and another that not only exceeds the average for the neighborhood but creates a lot that is sensitive to the historic house. The proposed subdivision is also different from the others along South Van Buren Street because it abuts a non-residential use. For these reasons, staff believes that the proposed subdivision does not violate any provision of this chapter or other applicable law.

**(2) Violate or adversely affect the Plan;**

The Master Plan recommends medium density detached residential development with 2.5 to 4 units per acre for this area. The proposed lots are zoned R-90, One-Family Detached, Restricted Residential and meet the development standards for that zone. The proposed subdivision will not violate or adversely affect the Plan or the Zoning Ordinance.

**(3) Overburden existing public services, including but not limited to water, sanitary sewer, public roads, storm drainage and other public improvements;**

The Department of Public Works has not identified any difficulty with the ability to provide water or sanitary sewer to the proposed subdivision. The proposed subdivision would only add one house to South Van Buren Street. Adequate sewer, water and storm drain capacity is available to serve an additional single-family dwelling. The proposal is not large enough to produce any identifiable impact upon the public street system or other public improvements.

**(4) Affect adversely the health or safety of persons residing or working in the subdivision or neighborhood;**

The proposed subdivision is located in a single-family neighborhood. A new single-family home is planned for the smaller lot. There are no health or safety concerns associated with this proposal that would be any different than any other home on the street.

**(5) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;**

The public welfare is unaffected by this proposal. Staff cannot identify any way that this subdivision would be injurious to property or improvements in the neighborhood. Neighbors have suggested that allowing this subdivision could create a precedence for subdivision within the neighborhood that would lead to its deterioration. Although this may be a valid concern, the proposed subdivision satisfies the development standards set forth in the Zoning Ordinance and poses no current identifiable harm or danger to the neighborhood.

**(6) Be unsuitable for the type of development, the use contemplated, and available public utilities and services; or**

This proposal is for a single-family home in a single-family residential neighborhood and there is no problem with public utilities and services.

**(7) Unreasonably disturb existing topography, in order to minimize stormwater runoff and to conserve the vegetation cover and soil.**

There are no conditions on this site that cannot be mitigated. The land is relatively flat and any tree protection or removal will be controlled by the City Forester as well as the Historic District Commission.

**STAFF RECOMMENDATION:**

The proposed subdivision meets the minimum Development Standards for R-90 zoned lots and there are no identifiable concerns associated with any of the required findings. Therefore, the approval of this subdivision hinges on whether the proposal complies "to the extent feasible" with the requirements of Section 25-749(b). Staff finds that the proposed subdivision meets the spirit of Section 25-749(b). Creating lots that do not meet the average is not unprecedented in the neighborhood or even on South Van Buren Street. The subdivision is not only in keeping with the variety of lot sizes in the neighborhood but provides a method of reducing the mass and scale of any future dwelling. The combination of the smaller lot size and the Historic District

May 14, 2012

Planning Commission

City of Rockville

Re: Final Record Plat Application (PL T2012-00517)

To Whom It May Concern,

There are 19 homes on South Van Buren Street that would be affected by the proposed subdivision, which would actually be a re-subdivision. Many of us are extremely upset by this.

I have collected 18 signatures representing 11 households. One of the homes on the block is being rented and its owner currently lives in Atlanta, GA. I did not collect a signature from the renters. Another couple at 124 South Van Buren Street plan to write their own letter against the proposal. This constitutes a majority of households that are against the proposed request to re-subdivide the historic property known as the Prettyman house.

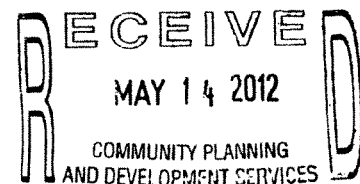
Sincerely,



Pat Phipps

131 South Van Buren St

Rockville, MD 20850



**Attachment 11-1**

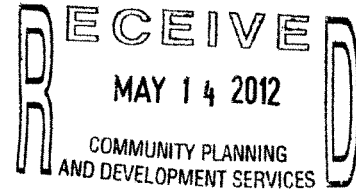
117

May 8, 2012

Planning Commission

City Of Rockville

Re: Final Record Plat Application (PL T2012-00517)



To Whom It May Concern,

We are writing regarding the Final Record Plat Application (PL T2012-00517) to subdivide property located at 104 W Jefferson Street into two record lots.

The owners of this historic home, known as the Prettyman house, seek to further subdivide their existing lot to make room for a second dwelling that would face South Van Buren Street. This street is known for its beautiful, expansive lawns; and, is perhaps one of the most desirable residential streets in downtown Rockville. It certainly has a reputation amongst folks that are familiar with the city as "the prettiest street in Rockville".

The Prettyman house and South Van Buren Street are on the Rockville walking tour, Explore Rockville. The Prettyman home was built in 1842 on 13.5 acres and was owned by the same family for 150 years until 1968. Various family members and others purchased land along the stable lane, which became South Van Buren Street.

The reasons for its popularity are many. Everyone living on South Van Buren Street is within walking distance of many restaurants and the metro, but that's not what makes this street so special. All of the residences on the East side of South Van Buren Street and most of the West side live in large older homes on large lots. Many of these older homes are being renovated, but they have kept the same character on the outside. The proposed resubdivided lot would not only detract from the historic Prettyman house, but it would also detract from the original farmhouse located across the street at 117 South Van Buren Street and the lovely 1927 built home next door. There is also a beautiful Victorian home across the street from the Prettyman house, as well as other homes on the street built in the 20s, 30s, and 40s.

The proposed 2<sup>nd</sup> lot would be half the size of many of the existing homes creating a deviation on the street that would not only impact the historical value of 104 W Jefferson Street, but the value of other homes as well. The resubdivided lot proposed is on a relatively small tract of land compared to its neighbors. A townhouse size home at the upper end of the street mixed with all of the larger homes will clearly take away from the unified look and beauty of our street.

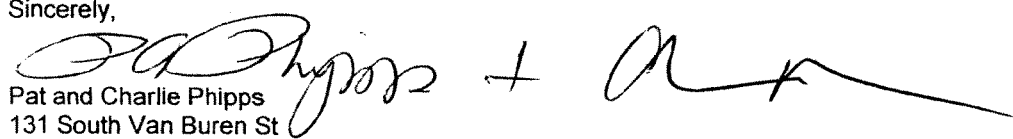
In addition, allowing the owners to resubdivide their historic property on a street with many homes 70 – 90 years old, in addition to the two that are 100+, would open the door for others to do the same. We do not want to set a precedent for subdividing lots in the neighborhood. For instance, there are several homes on South Van Buren Street that were built on double lots. What would prevent their owners from selling their property to a builder to build, not one, but two McMansions? Allowing this would change the whole character of the street and our historic neighborhood.


Attachment 11-2

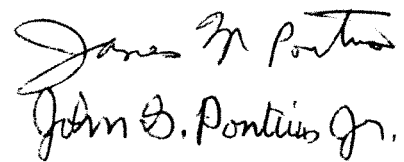
118

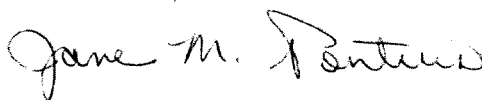
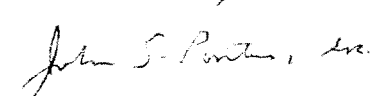
We understand that the Planning Commission, Mayor & Council members look at all requests for variances on a case-by-case basis, but we want to make sure that the Planning Commission understands that not every block is the same, not every neighborhood is the same.

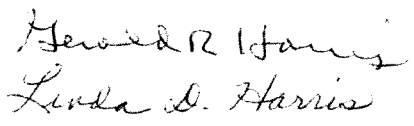
Sincerely,

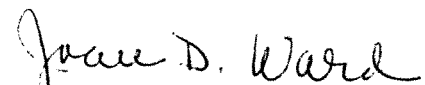
  
Pat and Charlie Phipps  
131 South Van Buren St  
Rockville, MD 20850


  
Kevin W. Palmer  
122 S. VAN BUREN STREET  
ROCKVILLE, MD 20850


  
John S. Pontius Jr.  
128 South Van Buren St.  
Rockville, MD 20850

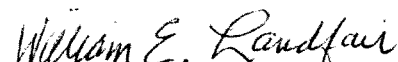
  
Jane M. Pontius  
127 So. Van Buren St.  
Rockville, MD 20850  
  
John S. Pontius, Jr.


  
Linda D. Harris  
132 S. Van Buren St.  
Rockville, MD 20850

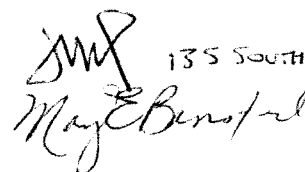
  
Joan D. Ward  
130 So. Van Buren St

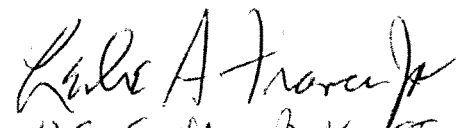
  
Jan Schisone  
118 S. Van Buren

  
Sarah Elizabeth McDonald  
126 S. Van Buren St.

  
William E. Landfair  
126 S. Van Buren St.

  
Carrie VanBuren  
123 S. Van Buren St.

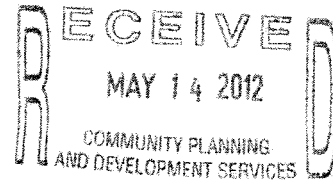
  
May E. Benford  
135 SOUTH VAN BUREN ST  
135 S. Van B.

  
Luke A. Francis  
129 S. Van Buren St.  
Rockville, MD 20850

May 8, 2012

Planning Commission  
City Of Rockville

Re: Final Record Plat Application (PL T2012-00517)



To Whom It May Concern,

We are writing regarding the Final Record Plat Application (PL T2012-00517) to subdivide property located at 104 W Jefferson Street into two record lots.

The owners of this historic home, known as the Prettyman house, seek to further subdivide their existing lot to make room for a second dwelling that would face South Van Buren Street. This street is known for its beautiful, expansive lawns; and, is perhaps one of the most desirable residential streets in downtown Rockville. It certainly has a reputation amongst folks that are familiar with the city as "the prettiest street in Rockville".

The Prettyman house and South Van Buren Street are on the Rockville walking tour, Explore Rockville. The Prettyman home was built in 1842 on 13.5 acres and was owned by the same family for 150 years until 1968. Various family members and others purchased land along the stable lane, which became South Van Buren Street.

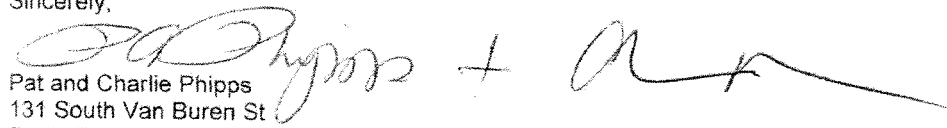
The reasons for its popularity are many. Everyone living on South Van Buren Street is within walking distance of many restaurants and the metro, but that's not what makes this street so special. All of the residences on the East side of South Van Buren Street and most of the West side live in large older homes on large lots. Many of these older homes are being renovated, but they have kept the same character on the outside. The proposed resubdivided lot would not only detract from the historic Prettyman house, but it would also detract from the original farmhouse located across the street at 117 South Van Buren Street and the lovely 1927 built home next door. There is also a beautiful Victorian home across the street from the Prettyman house, as well as other homes on the street built in the 20s, 30s, and 40s.


The proposed 2<sup>nd</sup> lot would be half the size of many of the existing homes creating a deviation on the street that would not only impact the historical value of 104 W Jefferson Street, but the value of other homes as well. The resubdivided lot proposed is on a relatively small tract of land compared to its neighbors. A townhouse size home at the upper end of the street mixed with all of the larger homes will clearly take away from the unified look and beauty of our street.


In addition, allowing the owners to resubdivide their historic property on a street with many homes 70 – 90 years old, in addition to the two that are 100+, would open the door for others to do the same. We do not want to set a precedent for subdividing lots in the neighborhood. For instance, there are several homes on South Van Buren Street that were built on double lots. What would prevent their owners from selling their property to a builder to build, not one, but two McMansions? Allowing this would change the whole character of the street and our historic neighborhood.


We understand that the Planning Commission, Mayor & Council members look at all requests for variances on a case-by-case basis, but we want to make sure that the Planning Commission understands that not every block is the same, not every neighborhood is the same.

Sincerely,


  
Pat and Charlie Phipps  
131 South Van Buren St  
Rockville, MD 20850

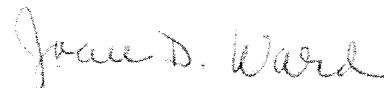
  
Kevin W. Palmer  
122 S. VAN BUREN STREET  
ROCKVILLE, MD 20850

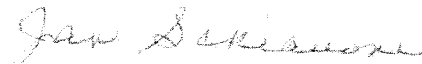
  
John B. Pontius Jr.  
128 South Van Buren St.  
Rockville, MD 20850

  
Jane M. Pontius  
127 So. Van Buren St.  
Rockville, MD 20850

  
John S. Pontius, Inc.


  
Gerald R. Harris  
Linda S. Harris  
132 S. Van Buren St.  
Rockville, MD 20850

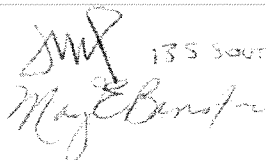
  
Jean D. Ward  
130 So. Van Buren St.


  
Jan Skisumone  
118 S. Van Buren

  
Sarah Elizabeth McBoe  
126 S. Van Buren St.

  
William E. Landfair  
126 S. Van Buren St.

  
Camille VanDyke  
123 S. Van Buren St.

  
May E. Benford  
135 SOUTH VAN BUREN ST  
135 S. Van Buren St.

  
Luke A. Francis  
129 S. Van Buren St.  
Rockville, MD 20850

*124 South Van Buren Street  
Rockville, Maryland 20850*

May 8, 2012

Ms. Margaret Hall  
Community Planning and Development  
City of Rockville

RE: Final Record Plat PLT2012-00517

Dear Ms. Hall:

I had an opportunity to review the above Final Record Plat Application last Friday. The applicant has incorrectly filed the proposed subdivision at 104 W. Jefferson Street as a *minor subdivision*. An Opinion and Order in the Circuit Court for Montgomery County was signed by Judge Micheal Mason and entered August 23, 1999. The court concluded as a matter of law that any subdivision at 104 W. Jefferson constitutes a *re-subdivision* and not a *simple subdivision*.

A re-subdivision mandates the use of zoning ordinance Sec.25.21.22.b. to determine lot size. The proposed building lot does not meet this requirement. The applicant must re-file their application request from a *minor subdivision* to a *re-subdivision* and re-notify the community of this change to obtain comments prior to any hearings. This change must be made before the Historic District Commission review on May 17<sup>th</sup> 2012 and before the Planning Commission hearing on May 23, 2012. There is not enough time to obtain comments on the corrected application prior to the Planning Commission hearing on May 23, 2012. The hearings should be rescheduled to a letter date.

Thank you for your attention to this matter.

Sincerely,



Richard J. Green

Attachment 11-6

122

**CITIZEN'S RESPONSE TO  
PLAT APPLICATION: PLT2012-00517  
104 W. JEFFERSON STREET**

PG#	DATE RECEIVED	CITIZEN'S NAME	TYPE OF SUBMISSION
1	5-08-2012	Richard Green	Hard copy included in PC Brief Book 12-2012.
2	5-14-2012	Pat Phipps	Cover letter and letter against resubdivision w/ signatures from 18 neighbors. <b>Hard copy, hand-delivered.</b>
3	5-14-2012	Pat Phipps	Cover letter <b>emailed to PC.</b>
4	5-17-2012	Richard Green	Letter to PC and Staff to not support resubdivision. <b>Hard copy, hand-delivered.</b>
5	5-18-2012	Harold & Ellen Pskowski	Letter referencing violation of Zoning Ordinance, Section 25.21.22.b, w/ copy of Attachment 6-14. <b>Hard copy, hand-delivered.</b>
6	5-18-2012	Richard Green	Letter with seven attachments. <b>Hard copy, hand-delivered.</b>
7	5-18-2012	Jan Schiavone	Letter to reject application due to conflict with zoning requirements. <b>Emailed to PC.</b>
8	5-18-2012	James Pontius	<b>Emailed to PC.</b>
9	5-21-2012	Jim Pickel & Mary Barnstead	Letter stating four reasons for careful consideration. <b>Emailed to PC.</b>
10	5-21-2012	Jim Pickel & Mary Barnstead	Letter referencing seven points why resubdivision should not be granted. <b>Emailed to PC.</b>
11	5-21-2012	Charles Phipps	Letter referencing zoning code, Section 25.21.22. <b>Emailed to PC.</b>
12	5-22-2012	Jim Pontius	Interpretation of the Resubdivision Requirements. <b>Emailed to PC.</b>
13	5-23-2012	Jim Pontius	Response to Staff Report. <b>Emailed to PC.</b>

*124 South Van Buren Street  
Rockville, Maryland 20850*

May 8, 2012

Ms. Margaret Hall  
Community Planning and Development  
City of Rockville

RE: Final Record Plat PLT2012-00517

Dear Ms. Hall:

I had an opportunity to review the above Final Record Plat Application last Friday. The applicant has incorrectly filed the proposed subdivision at 104 W. Jefferson Street as a *minor subdivision*. An Opinion and Order in the Circuit Court for Montgomery County was signed by Judge Micheal Mason and entered August 23, 1999. The court concluded as a matter of law that any subdivision at 104 W. Jefferson constitutes a *re-subdivision* and not a *simple subdivision*.

A re-subdivision mandates the use of zoning ordinance Sec.25.21.22.b. to determine lot size. The proposed building lot does not meet this requirement. The applicant must re-file their application request from a *minor subdivision* to a *re-subdivision* and re-notify the community of this change to obtain comments prior to any hearings. This change must be made before the Historic District Commission review on May 17<sup>th</sup> 2012 and before the Planning Commission hearing on May 23, 2012. There is not enough time to obtain comments on the corrected application prior to the Planning Commission hearing on May 23, 2012. The hearings should be rescheduled to a letter date.

Thank you for your attention to this matter.

Sincerely,



Richard J. Green

PLT2012-00517/104 W. JEFFERSON  
PC MTG 12-2012  
CITIZEN RESPONSE-GREEN

124

May 14, 2012

Planning Commission

City of Rockville

Re: Final Record Plat Application (PL T2012-00517)

To Whom It May Concern,

There are 19 homes on South Van Buren Street that would be affected by the proposed subdivision, which would actually be a re-subdivision. Many of us are extremely upset by this.

I have collected 18 signatures representing 11 households. One of the homes on the block is being rented and its owner currently lives in Atlanta, GA. I did not collect a signature from the renters. Another couple at 124 South Van Buren Street plan to write their own letter against the proposal. This constitutes a majority of households that are against the proposed request to re-subdivide the historic property known as the Prettyman house.

Sincerely,

Pat Phipps

131 South Van Buren St

Rockville, MD 20850

PLT2012-00517/104 W. JEFFERSON  
PC MTG 12-2012  
CITIZEN RESPONSE-PHIPPS

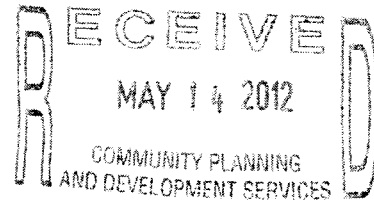
125

May 8, 2012

Planning Commission

City Of Rockville

Re: Final Record Plat Application (PL T2012-00517)



To Whom It May Concern,

We are writing regarding the Final Record Plat Application (PL T2012-00517) to subdivide property located at 104 W Jefferson Street into two record lots.

The owners of this historic home, known as the Prettyman house, seek to further subdivide their existing lot to make room for a second dwelling that would face South Van Buren Street. This street is known for its beautiful, expansive lawns; and, is perhaps one of the most desirable residential streets in downtown Rockville. It certainly has a reputation amongst folks that are familiar with the city as "the prettiest street in Rockville".

The Prettyman house and South Van Buren Street are on the Rockville walking tour, Explore Rockville. The Prettyman home was built in 1842 on 13.5 acres and was owned by the same family for 150 years until 1968. Various family members and others purchased land along the stable lane, which became South Van Buren Street.

The reasons for its popularity are many. Everyone living on South Van Buren Street is within walking distance of many restaurants and the metro, but that's not what makes this street so special. All of the residences on the East side of South Van Buren Street and most of the West side live in large older homes on large lots. Many of these older homes are being renovated, but they have kept the same character on the outside. The proposed resubdivided lot would not only detract from the historic Prettyman house, but it would also detract from the original farmhouse located across the street at 117 South Van Buren Street and the lovely 1927 built home next door. There is also a beautiful Victorian home across the street from the Prettyman house, as well as other homes on the street built in the 20s, 30s, and 40s.


The proposed 2<sup>nd</sup> lot would be half the size of many of the existing homes creating a deviation on the street that would not only impact the historical value of 104 W Jefferson Street, but the value of other homes as well. The resubdivided lot proposed is on a relatively small tract of land compared to its neighbors. A townhouse size home at the upper end of the street mixed with all of the larger homes will clearly take away from the unified look and beauty of our street.


In addition, allowing the owners to resubdivide their historic property on a street with many homes 70 – 90 years old, in addition to the two that are 100+, would open the door for others to do the same. We do not want to set a precedent for subdividing lots in the neighborhood. For instance, there are several homes on South Van Buren Street that were built on double lots. What would prevent their owners from selling their property to a builder to build, not one, but two McMansions? Allowing this would change the whole character of the street and our historic neighborhood.


126



We understand that the Planning Commission, Mayor & Council members look at all requests for variances on a case-by-case basis, but we want to make sure that the Planning Commission understands that not every block is the same, not every neighborhood is the same.


Sincerely,


  
Pat and Charlie Phipps  
131 South Van Buren St  
Rockville, MD 20850

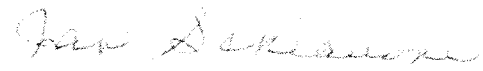
  
Robin Phipps  
Kevin M. Palmer  
122 S. VAN BUREN STREET  
ROCKVILLE, MD 20850

  
James M. Pontius  
John B. Pontius Jr.  
128 South Van Buren St.  
Rockville, MD 20850

  
Jane M. Pontius  
127 So. Van Buren St.  
Rockville, MD 20850  
  
John B. Pontius, Jr.

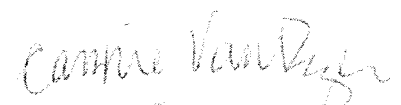
  
Harold R. Harris  
Linda B. Harris  
132 S. Van Buren St.  
Rockville, MD 20850


  
Joan D. Ward  
130 So Van Buren St


  
Jan L. Harrison  
115 S. Van Buren

  
Sarah Elizabeth McDonald  
126 S. Van Buren St.

  
William E. Landfall  
126 S. Van Buren St.

  
Camille Van Buren  
123 S Van Buren St.

  
JMF 135 SOUTH VAN BUREN ST  
May E. Benschel 135 S Van Buren

  
Leola A. Troncy  
125 S. Van Buren St.  
Rockville, MD 20850

May 14, 2012

Planning Commission

City of Rockville

Re: Final Record Plat Application (PL T2012-00517)

To Whom It May Concern,

There are 19 homes on South Van Buren Street that would be affected by the proposed subdivision, which would actually be a re-subdivision. Many of us are extremely upset by this.

I have collected 18 signatures representing 11 households. One of the homes on the block is being rented and its owner currently lives in Atlanta, GA. I did not collect a signature from the renters. Another couple at 124 South Van Buren Street plan to write their own letter against the proposal. This constitutes a majority of households that are against the proposed request to re-subdivide the historic property known as the Prettyman house.

Sincerely,

Pat Phipps

131 South Van Buren St

Rockville, MD 20850

PC MTA 12-12



Fwd: Final Record Plat Application (PL T2012-00517)  
CharlienPat2 to: planning.commission

05/14/2012 11:12 AM

CharlienPat2	Fwd: Final Record Plat Application (PL T2012-00517)	05/14/2012
--------------	---	------------

1 attachment



Cover Letter Planning Commission.docx

----- Message from CharlienPat2@aol.com on Mon, 14 May 2012 10:43:28 -0400 (EDT) -----

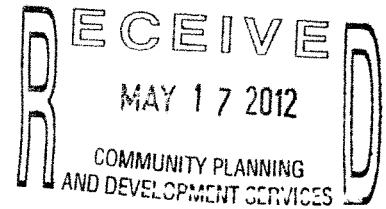
To: planningcommission@rockvillemd.gov

Subject Final Record Plat Application (PL  
: T2012-00517)

Second email - Please see attached Cover Letter.

124 S. Van Buren Street  
Rockville, Maryland 20850

May 17, 2012



Margaret Hall  
City of Rockville  
Community Planning and Development  
111 Monroe Street  
Rockville, Maryland 20850

RE: PLT2012-00517

Dear Margaret:

I am asking the Staff not to support the above subdivision application as it disregards the standard of zoning section 25.21.22.b

Resubdivision of existing lots. In any resubdivision of developed or undeveloped lots within an existing residential area, the **plat must maintain**, to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed resubdivision. This requirement **supersedes the minimum lot size and frontage requirements of the applicable zone**, except where the average lot size or frontage of the existing lots is smaller than the minimum requirements of the zone, in which case the minimum requirements of the zone apply.

The proposed subdivision measuring 9056 sq.ft. is significantly lower than the 14,430 sq.ft. average of lots within 500 feet of the subject property. There is more than 27,500 sq.ft. of land on the applicants property. It is feasible to create an 11,000-12,000 sq.ft. subdivided lot and still maintain a generous 15,000-16,000 sq.ft. lot with the Prettyman House causing no adverse impact to the House, its grounds, or its streetscape on West Jefferson Street. The existing carport and off street parking could remain undisturbed with the Historic House. This would create a new building lot more in keeping with those on S. Van Buren Street and prevent future subdivision of the remaining lot should the Prettyman House be modified or lost due to neglect, fire, or natural disaster.

Please reconsider your position on the subdivision application in its current form as approving the R-90 lot constitutes a waiver of the above re-subdivision requirement without the process of a special exception through the Board of Appeals. Please discuss with the applicant before the planning Commission Hearing.

Sincerely,

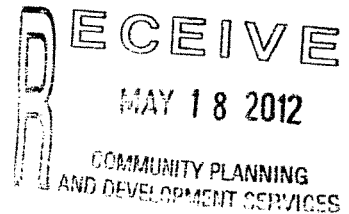
  
Richard J. Green

PLT2012-00517/104 W. JEFFERSON  
PC MTG 12-2012  
CITIZEN RESPONSE-GREEN

130

117 S. Van Buren Street  
Rockville, Maryland 20850-2802  
17 May 2012

Planning Commission  
City Hall  
111 Maryland Avenue  
Rockville, MD 20850



Re: Final Record Plat Application PLT2012-00517

Dear Planning Commission Members:

We are writing to offer our comments on the above application to subdivide the land at 104 W. Jefferson Street, commonly known as the Prettyman property, into two record lots. We reside at and own the residence at 117 S. Van Buren Street, also known as the Evans Summer House, which is directly across S. Van Buren Street from the proposed subdivision, and are interested parties. We are opposed to the application because that it violates the Zoning Ordinance, specifically Section 25.21.22.b., *Resubdivision of Existing Lots*.

Section 25.21.22.b. applies to this application because the application is a proposed resubdivision of a developed or undeveloped lot, and within an existing residential area. There is no doubt that the application proposes a resubdivision, because the Prettyman property has been subdivided several times. Our own home was constructed upon Prettyman land when the west side of the future S. Van Buren Street was split off and deeded to the Evans family in 1923.

Section 25.21.22.b. requires that, upon a resubdivision, "the plan must maintain, to the extent feasible, the average area and frontage of existing lots within 500 feet of the proposed resubdivision." It is instructive to consider the size of those lots closest to the proposed resubdivision. The following lots are either adjacent to the Prettyman property, or directly across a public way from it:

Address	Square Feet
105 S. Van Buren Street	20,473
109 S. Van Buren Street	23,595
117 S. Van Buren Street	19,965
118 S. Van Buren Street	15,000
115 W. Jefferson Street	13,435
Average:	18,494

The ordinance, however, requires that the Commission consider "the average area and frontage of existing lots within 500 feet of the proposed resubdivision." To do so, City staff relies upon an October 1998 study prepared for an earlier resubdivision application for the

PLT2012-00517/104 W. JEFFERSON  
PC MTG 12-2012  
CITIZEN RESPONSE-PSKOWSKI

131

identical property. That study was prepared by Thomas A. Maddox, and a copy of his letter to the Planning Department, dated October 20, 1998, is attached. The letter states that the average lot size in the study area was 12,300 square feet and the average frontage was 84 feet. The letter also shows that Mr. Maddox was either improperly instructed in the commission of his survey or misinterpreted the ordinance, for the letter states that "I only considered lots being used as residences." The 500-foot study area includes a number of nonresidential lots, including the Baptist Cemetery, the Methodist Church, the Cooke-Luckett House, and the Rockville Academy. All of these lots exceed the 12,300 square foot average and 84-foot frontage determined by Mr. Maddox, and would have had a significant impact on his findings if they had been included.

There is no justification for excluding nonresidential lots from the study area. Section 25.21.22.b. mandates that the Commission consider the average area and frontage of "existing lots." If the Mayor and Council had intended to include only residential lots, they knew how to do so, and would have drafted the ordinance in that manner. But instead, they decided to include all lots. Because the City staff recommendation is based on faulty data that does not comply with the ordinance, we request that the Commission defer any action on this application until a study can be undertaken using the correct statutory criteria. In doing so, the Commission should provide guidelines to City staff as to the proper interpretation of the ordinance. For example, is the 500-foot study area measured from the perimeter of the subject property, or from its center? Are the measurements made from the existing lot, or from the proposed new lot? The ordinance does not provide an answer to these questions, and it is the responsibility of the Commission to provide uniform guidelines for its application.

Regardless of whether the Commission accepts the Maddox study, the proposed new lot, which hardly exceeds 9,000 square feet, still violates Section 25.21.22.b. because it fails to maintain the average area and frontage of the existing lots. The ordinance requires that "the plat *must* maintain" (emphasis added) the average area and frontage. Section 25.03.01 of the Zoning Ordinance stipulates that, in interpreting its provisions, "the words 'shall,' 'may not,' and 'must' are always mandatory and not discretionary." Thus, the Commission does not have discretion to vary the requirements of Section 25.21.22.b, except under the circumstances discussed immediately below.

The sole exception to the strict application of Section 25.21.22.b. is found in its language that the average area and frontage must be maintained "to the extent feasible." The meaning of this exception refers to practical difficulties encountered in accomplishing a resubdivision that complies with the ordinance. One example would be a lot whose topography, such as a severe slope or a water course, prevented a resubdivision that otherwise met the requirements of the ordinance. Another would be a lot with an unusual shape or difficult access to a public way. The

Prettyman property presents no such difficulties, as it is a flat rectangular lot with no special conditions that would prevent a resubdivision that complies with Section 25.21.22.b. by maintaining the average area and frontage.

In judging this application, the Commission should look to the purpose of the Mayor and Council in enacting Section 25.21.22.b. The ordinance is intended to prevent a property owner from getting a "second bite at the apple" after an initial subdivision. Subdivisions, such as those to which the Prettyman property has been subject, do not always use the minimum permissible lot size. Prime residential subdivisions, such as that on S. Van Buren Street, often exceed the required minimum lot size to provide enhanced value and prestige for the homeowners. Although subsequent resubdivisions can be controlled by covenant, the Mayor and Council decided that the City should maintain control over such resubdivisions through the zoning ordinance, particularly in Rockville's older neighborhoods which may predate the use of lot-size covenants. The current application is exactly the situation the ordinance was designed to address.

If the Commission allows the subject application, it will permit the creation of a lot that is 30% smaller in area than what is now the smallest lot on S. Van Buren Street. This is contrary to the intent of Section 25.21.22.b. Moreover, a successful application will be an incentive to additional resubdivision requests in the immediate neighborhood, as it will reduce the average area and frontage of lots within a 500-foot radius, thereby making it easier for other land owners to meet the requirements of Section 25.21.22.b.

The applicants could have easily complied with Section 25.21.22.b. by proposing a subdivision creating a new lot that meets the area and frontage requirements. With a total lot size of 27,538 square feet, they have more than enough land to do so. We would be willing to consider any application that complies with the ordinance, but have little choice but to oppose one that so greatly deviates from it.

Sincerely yours,



Harold W. Pskowski



Ellen C. Pskowski

THOMAS A. MADDUX  
PROFESSIONAL LAND SURVEYOR

Registered to Practice:  
Maryland  
Virginia  
District of Columbia

8933 Shady Grove Court  
Gaithersburg, MD 20877  
(301) 984-5804  
(301) 330-0812  
FAX (301) 984-6865

October 20, 1998

City of Rockville  
Planning Department  
111 Maryland Avenue  
Rockville, Maryland 20850-2364

Attn: Margaret Hall, Planner

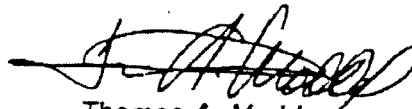
Re: John Law property

Dear Ms. Hall:

This is in reply to your request to determine the average lot area and frontage of existing lots within 500 feet of the subject property. Attached is a copy of part of the Montgomery County tax map with the study area outlined. As you can see from a review of this plan there is hardly an "average" lot considering the variation of sizes and shapes. In making my determination I only considered lots being used as residences.

Based on my review of assessment records, plats within the study area the average lot area is 12,300 square feet and the average lot frontage is 84 feet. I hope this information will serve your intended use. If you have any questions on this matter please contact me.

Yours truly,



Thomas A. Maddox

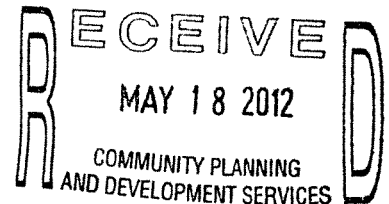
cc. John Law

Attachment 6-14  
p. 153

*124 S. Van Buren Street  
Rockville, Maryland 20850*

May 18, 2012

Mr. David Hill  
Chairman, Planning Commission  
City of Rockville  
111 Maryland Avenue.  
Rockville, Maryland 20850



RE: Final Record Plat Application PLT2012-00517

Dear Mr. Hill and Planning Commissioners,

I live two houses away from the proposed subdivision and am asking the Planning Commission not to support the application in its current form. The staff report recommends approval of PLT2012-0057 based primarily upon testimony and prior approval of a similar 14 year old application (PLT98-0150 and PLT98-0154) which was never recorded and expired. The staff report is misleading and incomplete as to the final disposition of this case. I am providing additional information to the commission to complete the record.

The prior identical application(PLT98-0150 and PLT98-0154 was denied twice by the planning commission, remanded by the circuit court for new findings and subsequently approved by the Commission with no new facts or changes in the record. The final approval which the staff currently relies upon in recommending PLT2012-0057 was then appealed to the Circuit Court for Judicial Review(*C.A. No. 205626*) on grounds the Commission was arbitrary and capricious in their reversal of the prior decision.(*Item 1*) Staff has not provided you with this history. Memorandum in Support, Opposition and Reply for judicial review were filed and oral arguments were scheduled for July 17<sup>th</sup> 2000. (*Items 2,3,4*) The case was set to be overturned by the Honorable Durke G. Thompson of the Circuit Court for Montgomery County.

Prior to the scheduled hearing, Attorney Timothy Dugan contacted Judge Thompson on behalf of Mr. and Mrs. James Fegan, Jr. The Fegan's purchased the Prettyman property seven months earlier from the original applicant Dr. John Law. The Fegan's informed the court they did not wish to be a party to the appeal concerning their subdivision and wished to allow the subdivision application to lapse or be rendered ineffective. (*item 5*)

A consent decree was reached between the City's Attorney and our Attorney's to continue the oral argument and stay further action on the appeal pending expiration of the application on October 27, 2001. (*item 6*) At that time the case became moot and was dismissed. (*item 7*)

PLT2012-00517/104 W. JEFFERSON  
PC MTG 12-2012  
CITIZEN RESPONSE-GREEN

Final record plat application (PLT98-0150 and PLT98-0154) is a 14 year old expired application and cannot be used to support PLT2012-0057 which the staff has done in their recommendation. The consent decree to stay further action on the circuit court appeal was in effect because the Fegan5 wanted the subdivision application to expire. The applicant's intervention in the court proceedings denied the aggrieved parties their day in court and now he wants the Planning Commission to reinstate the same 14 year old expired application for approval without judicial review. This is legally flawed.

Furthermore, conditions have changed in the past 14 years. The applicant has significantly altered the garden setting of the home by removing countless historic ornamental trees and shrubs without HDC approval. All of the Planning Commission members are new. A new city code was revised and adopted clarifying ambiguities concerning subdivision and resubdivision. Even Sec. 25-749b. which the staff relies upon was changed:

25-749(b)-In any resubdivision of developed or undeveloped lots within an existing residential area, the **Commission shall maintain**, to the extent feasible, the average area and frontage of existing lots within five hundred(500) feet of the proposed resubdivision.

To:

25.21.22(b)-In any resubdivision of developed or undeveloped lots within an existing residential area, the **plat must maintain**, to the extent feasible, the average area and frontage of existing lots within five hundred (500) feet of the proposed resubdivision.

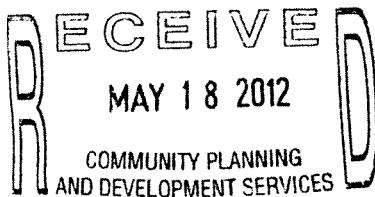
For these reasons the Planning Commission must rely upon new facts and testimony in considering approval of PLT2012-00517. This includes a new courtesy review by the Historic District Commission as alternative lot divisions greater than the proposed R-90 lot were never presented to the HDC to determine matters of feasibility and impact on the Prettyman House. It is feasible to create a subdivided lot larger than 9056sq. ft. without adversely affecting the historic grounds and structures at 104 W. Jefferson St.

Application PLT 2012-00517 is a new application and must stand on the merits of current testimony and cannot be approved on the basis of an unrecorded expired application

Sincerely,



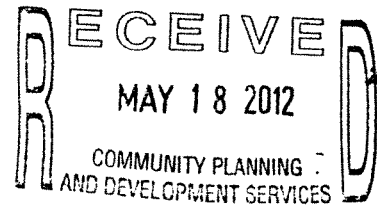
Richard J. Green, D.D.S.



IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITION OF:

MRS. JANICE H. SCHIAVONE  
AND THE CITIZENS FOR THE  
PRESERVATION  
OF SOUTH VAN BUREN STREET  
118 S. Van Buren Street  
Rockville, MD 20850



Petitioners

C.A. No. 205626

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE CITY OF  
ROCKVILLE PLANNING COMMISSION,  
IN THE CONSOLIDATED CASES OF  
THE APPROVAL OF RESUBDIVISION  
PLANS NO.'S PLT 98-0150, AND PLT  
98-0154, OF DR. JOHN LAW,

Applicant.

AMENDED  
PETITION FOR JUDICIAL REVIEW

Petitioners, Mrs. Janice Schiavone and the Citizens for the Preservation of South Van Buren St., by and through their undersigned counsel, file this Petition for Judicial Review of the decision of the City of Rockville. Planning Commission (hereinafter the "Commission") approving on October 27, 1999, the plan of re-subdivision identified as consolidated case No.'s PLT 98-0150 and PLT 98-0154 for two (2) lots located at 100 S. Van Buren Street, Rockville, Maryland owned by Dr. John Law. Applicant.

Petitioners were parties to the proceedings before the Commission and are aggrieved by

*Item 1*

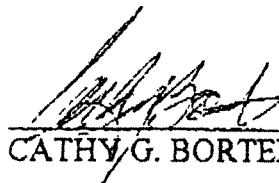
the Commissioner's approval of the aforementioned plans of re-subdivision. Petitioners allege that the decision of Commission is a product of legal error, deficient and erroneous in its findings and is arbitrary and capricious.

Respectfully submitted,

ABRAMS, WEST, STORM & DIAMOND, P.C.



STANLEY D. ABRAMS #3115



CATHY G. BORTEN #18005

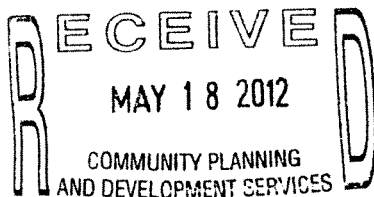
4550 Montgomery Avenue #760N  
Bethesda, Maryland 20814  
(301) 951-1540  
Counsel for Petitioners

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served this 6th day of January, 2000 by mailing, first class, postage prepaid, to: Rockville City Clerk, 111 Maryland Avenue, Rockville, Maryland 20850, Paul T. Glasgow, Esq. City Attorney, City of Rockville, 111 Maryland Avenue, Rockville, MD 20850 and Nancy M. Floreen, Esq. 401 East Jefferson St., Suite 203, Rockville, MD 20850.



STANLEY D. ABRAMS



Item 1

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

AMENDED PETITION OF:

**MRS. JANICE H. SCHIAVONE and  
the CITIZENS FOR PRESERVATION  
OF SOUTH VAN BUREN ST.**

124 S. Van Buren St.  
Rockville, MD 20850

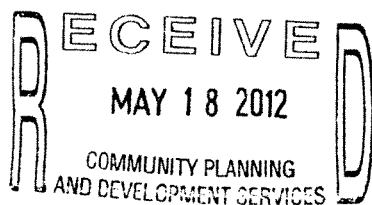
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CA. NO. 205626

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE CITY OF  
ROCKVILLE PLANNING COMMISSION  
IN THE CONSOLIDATED CASES OF  
THE APPROVAL OF RESUBDIVISION  
PLANS NO.'S PLT 98-0150, AND PLT  
98-0154, (Application of Dr. John Law)

MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL REVIEW

Pursuant to Maryland Rule 7-207(a), Petitioner JANICE H. SCHIAVONE and THE CITIZENS FOR THE PRESERVATION OF SOUTH VAN BUREN STREET hereby submits this memorandum in support of the petition for judicial review of the action and decision of the City of Rockville Planning Commission (the "Commission") in approving an application for resubdivision approval to resubdivide a single 27,535 square foot residential, R-90 zoned property at the intersection of West Jefferson Street and South Van Buren Street, within an established residential area into two disparate sized lots. For the reasons which follow, Petitioners respectfully request that the decision of the Commission be reversed.



Item 2

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITION OF MRS. JANICE H. SCHIAVONE :  
AND THE CITIZENS FOR THE :  
PRESERVATION OF SOUTH VAN BUREN :  
STREET :

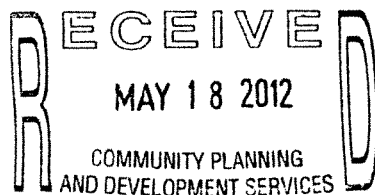
FOR JUDICIAL REVIEW OF DECISION :  
OF THE CITY OF ROCKVILLE PLANNING :  
COMMISSION :

: Civil No. 205626

IN THE CONSOLIDATED CASES OF :  
THE APPROVAL OF RESUBDIVISION :  
PLANS NOS. PLT 98-0150, AND :  
PLT98-0154, LOTS 20 AND 21, :  
BLOCK 3, OF DR. JOHN LAW :

**MEMORANDUM IN OPPOSITION TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Maryland Rule 7-207(a) , Intervenor Respondents, the Mayor and County of Rockville and the Rockville Planning Commission, submit this memorandum in opposition to the Petition for Judicial Review of the action and decision of the City of Rockville Planning Commission approving a final record plat subdividing a 18,479 foot lot deeded lot located within the City's Historic District into two unequal sized lots so as to preserve the open space and garden setting that frames the existing historic structure located on the property. For reasons set forth below, Respondents respectfully request that this Court defer to the expertise of the Planning Commission and affirm its decision as a fairly debatable one supported by substantial evidence of record.



Item 3

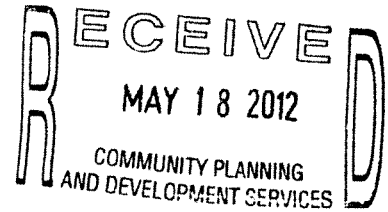
IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITION OF MRS. JANICE H. SCHIAVONE \*  
and the CITIZENS FOR THE \*  
PRESERVATION OF SOUTH VAN BUREN \*  
STREET \*

FOR JUDICIAL REVIEW OF DECISION \*  
OF THE CITY OF ROCKVILLE PLANNING \*  
COMMISSION \*

CA. NO. 205626

IN THE CONSOLIDATED CASES OF \*  
THE APPROVAL OF RESUBDIVISION \*  
PLANS NO.'S PLT 98-0150, AND PLT \*  
98-0154, LOTS 20 AND 21, BLOCK 3, OF \*  
DR. JOHN LAW \*



**PETITIONERS REPLY MEMORANDUM**

**I. Petitioners Are Not Precluded From Raising Issues Relating To The Planning Commissions Jurisdiction In This Appeal**

Respondents, City of Rockville and City of Rockville Planning Commission (the "City") contend that Petitioners are precluded from raising the issues that a variance and preliminary subdivision plan were required to be applied for and approved prior to approval of the Applicants Final Subdivision Plan because these issues were not raised before the Planning Commission (City Memorandum pp. 8-10). The Petitioners have contended that the City Subdivision Regulations require the filing and approval by the Commission of a variance under §25-712 (a) because of the discretion which the City was requested to exercise in the resubdivision of the existing lot pursuant to §25-749(b) and the failure to first approve a preliminary plan of subdivision under §25-727 before approving a final plan of subdivision.

Each of Petitioners contentions go to the issue of the jurisdiction of the planning

*Item 4*

(141)

Timothy Dugan  
301.215.6612  
tdugan@wilkesartis.com

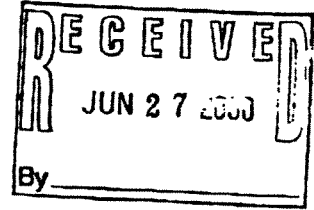
# Wilkes Artis

Chartered  
Attorneys at Law

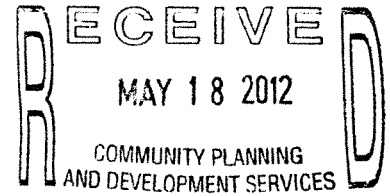
Suite 800, 3 Bethesda Metro Center  
Bethesda, MD 20814-6301  
301.654.7800  
Fax: 301.656.3978

June 26, 2000

The Honorable Durke G. Thompson  
Circuit Court for Montgomery County  
50 Maryland Avenue  
Rockville, Maryland 20850



Re: Circuit Court Civil Action No. 205626  
Petition of Janice Schiavone, et al. vs.  
City of Rockville Planning Commission



Dear Judge Thompson:

We represent Mr. and Mrs. James G. Fegan, Jr. As of November 18, 1999, Mr. and Mrs. Fegan have been the fee simple owners of 104 West Jefferson Street, Rockville, Maryland 20850. The Fegans are not and do not wish to become parties to the Circuit Court appeal.

The Fegans have informed us that their recently acquired home at 104 West Jefferson Street is the same land in question of Civil Action No. 205626. Their understanding is consistent with my discussions with Sondra H. Block, Esq., Assistant City Attorney for the City of Rockville, and Stanley D. Abrams, Esq., the petitioners' attorney.

On behalf of Mr. and Mrs. Fegan, I bring the following matters to the Court's attention:

1. Mr. and Mrs. Fegan have no interest in pursuing the appeal concerning the subdivision of their property, nor the underlying subdivision application itself.
2. The Fegan's plan to take no action concerning subdivision, and to allow any current subdivision approval to lapse, pursuant to any applicable laws.
3. The Fegan's have no objection to any administrative action whereby the pending subdivision application is discontinued, suspended, or otherwise rendered ineffective.

In short, Mr. and Mrs. Fegan have no interest in being involved in any litigation nor in any subdivision administrative proceeding concerning their home.

Annapolis, Maryland

Fairfax, Virginia

Greenbelt, Maryland

Waldorf, Maryland

Washington, DC

Team 5

**Wilkes Artis**  
*Chartered*

10:0815011543 P:373  
The Honorable Durke G. Thompson  
June 26, 2000  
Page 2

I am sending a copy of this letter to those attorneys who I believe have some involvement or interest in the matter. Please contact me should there be a need for Mr. and Mrs. Fegan to take any further steps.

Very truly yours,

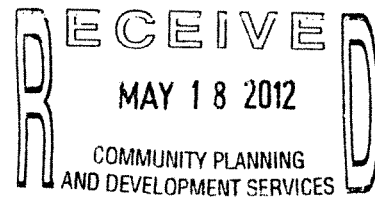


Timothy Dugan

TD/ep

cc: Mr. and Mrs. James G. Fegan, Jr.  
Sondra H. Block, Esq.  
Stanley D. Abrams, Esq.  
Patrick C. McKeever, Esq.

16177.001  
#201099



Item 5

143

ABRAMS, WEST, STORM & DIAMOND, P.C.

ATTORNEYS AT LAW  
SUITE 760N

4550 MONTGOMERY AVENUE  
BETHESDA, MARYLAND 20814-3304

(301) 951-1550

FAX: (301) 951-1543

awsdpc@aol.com

WRITER'S DIRECT DIAL NUMBER

301/951-1540

KENNETH R. WEST  
STANLEY D. ABRAMS  
HARRY C. STORM  
M. GREGG DIAMOND  
CATHY G. BORTEN  
JAMES L. PARSONS, JR.

PRACTICING IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

June 29, 2000

Mrs. Janice H. Schiavone  
118 South Van Buren Street  
Rockville, Maryland 20850

and

Dr. Richard Green  
124 South Van Buren Street  
Rockville, Maryland 20850

**RE: Circuit Court Appeal  
Civil Action No. 205626**

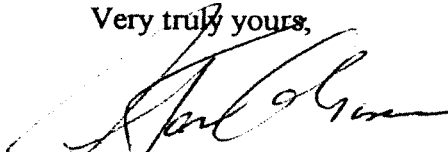
Dear Mrs. Schiavone & Dr. Green:

Enclosed is a copy of a letter received from an attorney representing the Fegan's which was addressed to the judge hearing our appeal. The letter indicates that the Fegan's have no interest in pursuing the subdivision of their property or this appeal. I have spoken to Sondra Bloch, Asst. City Attorney for Rockville and in view of the Fegan's position the City also has no interest in continuing the appeal. Ms. Bloch advised me that the likely course of action would be for the City Planning Commission to rescind their approval at the July 12, 2000 meeting of the commission. I advised her that we would want to continue the hearing date before the Court scheduled for July 15, 2000 and she agreed. Any dismissal of the appeal would depend upon the planning commission action.

The rescission would essentially moot the appeal. There is unfortunately no way to ensure another subdivision plan being filed in the future absent the Fegan's or any subsequent owner voluntarily filing a restrictive covenant on their property which I do not see happening.

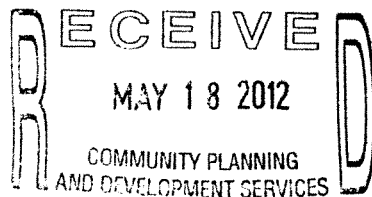
If you have any questions, please contact me.

Very truly yours,



Stanley D. Abrams

SDA:dw  
Enclosure



ITEM 6

# ABRAMS, WEST, STORM & DIAMOND, P.C.

KENNETH R. WEST  
STANLEY D. ABRAMS  
HARRY C. STORM  
M. GREGG DIAMOND  
CATHY G. BORTEN  
JAMES L. PARSONS, JR.

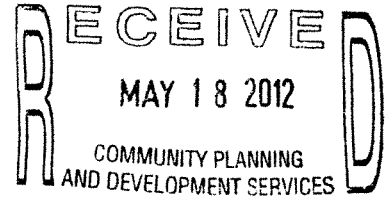
PRACTICING IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

ATTORNEYS AT LAW  
SUITE 760N  
4550 MONTGOMERY AVENUE  
BETHESDA, MARYLAND 20814-3304  
(301) 951-1550  
FAX: (301) 951-1543

WRITER'S DIRECT DIAL NUMBER  
(301) 951-1527  
EMAIL "cborten@awsdlaw.com"

November 15, 2001

Dr. Richard J. Green, DDS, MSD  
124 South Van Buren Street  
Rockville, Maryland 20850



**Re: Petition for Judicial Review of Dr. Law Resubdivision; Civil 205626**

Dear Dr. Green:

Enclosed please find a copy of a Notice of Contemplated Dismissal of the above referenced case from the Circuit Court for Montgomery County, Maryland. The Notice indicates that the court will dismiss the above referenced case for lack of prosecution within 30 days of the notice (November 5, 2001), unless a written motion showing good cause to defer the entry of dismissal is received by the court prior to that time.

The file indicates that, pursuant to a motion filed by the Assistant City Attorney for Rockville, to which you consented, the Circuit Court ordered on July 13, 2000 that the oral argument originally set for July 17, 2000 was continued and stayed until October 27, 2001. The subdivision application which formed the basis of your appeal should have expired on October 27, 2001. In addition, correspondence in the file indicates that the owners of the property (Fegan), had no intention of pursuing the application. If the issues in the case for judicial review are now moot, there is no need to file anything with the court.

In your letter to Stanley Abrams dated July 27, 2000, you indicated that although you wished to retain him as your attorney, since there was no "meaningful work to be done unless some party of standing attempts to record the subdivision plat..." you requested that Mr. Abrams discontinue any further work on the case pending notification by you or Mrs. Schiavone otherwise. Please advise us prior to November 30 if you would like us to take any further action on the case.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy G. Borten".

Cathy G. Borten

Enclosure

cc: Stanley D. Abrams, Esq.

ITAM 7

145

CIVIL/FAMILY DEPARTMENT  
59 MARYLAND AVENUE, ROOM 107  
ROCKVILLE, MD 20850

Tab 22

DECEMBER

NOV 08 2001

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Civil-205626 RICHARD GREEN DR, ET AL -V- CITY OF ROCKVILLE PLANNING COM  
FOR PENDING ISSUES

NOTIFICATION TO PARTIES OF CONTEMPLATED DISMISSAL

Pursuant to Maryland Rule 2-507, this proceeding will be DISMISSED FOR LACK  
OF PROSECUTION/JURISDICTION WITHOUT PREJUDICE in 30 days unless prior to that  
time a WRITTEN motion showing good cause to defer the entry of dismissal is  
filed.

DATE OF THIS NOTICE: 11/05/2001

DIRECT ALL INQUIRIES TO THE  
CIVIL/FAMILY DEPARTMENT AT  
THE ABOVE ADDRESS

CATHY G BORTEN  
ABRAMS WEST & STORM P.C.  
4550 MONTGOMERY AVE 750N  
BETHESDA MD 20814

T  
O

RECEIVED  
MAY 18 2012  
COMMUNITY PLANNING  
AND DEVELOPMENT SERVICES

Item 7

148

## Comment for Final Record Plat PLT2012-00517

I live at 118 South Van Buren Street and would be directly impacted by approval of the proposed subdivision of the Prettyman/Fegan property.

My husband and I were thrilled when we moved onto this street in 1963 to be living on the nicest street in Rockville as it was known then and is still known. Many of the homes are occupied by children or grandchildren of original owners and all are at least 50 years old, some much, much older. Many were built before the street was asphalt. It is a beautiful gateway to everything wonderful and "old town" in Rockville with older homes and spacious lawns. Our street maintains a quiet, tranquil and stable esthetic appearance. It is unique to find a street like South Van Buren Street in this time of multiple townhouses jammed onto small parcels. Trees and green space, which are of special interest in the City of Rockville, and which are plentiful on South Van Buren Street, would be adversely affected.

As I look around Rockville, I see neighborhoods irreparably changed by infill McMansions totally out of character with their neighborhoods. It seems to snowball. One giant house is built between two normal sized houses and soon others appear. In the case of South Van Buren Street, lots are large enough that many of them could possibly be split totally changing the ambience of our street. My understanding is that a majority of the homeowners would not want to see that happen.

I understand that a newly subdivided lot must be at least the size of the average of those that are around it and a 9,000 square lot would not fit that requirement. To the best of my knowledge, the smallest lot on South Van Buren Street is around 12,500 square feet. Approving this application would set a precedent which would make it easier to subdivide lots on this street, totally destroying the look and feel of the neighborhood.

Going back further in time, the Prettyman house at one time had an expansive front lawn which was sliced off in order to change the configuration of Jefferson Street. This plan would result in further erosion of the remaining property.

In attending the Historic District Commission on May 17, 2012, I found that the members appeared to know nothing about this application although a Memo had been forwarded to the commissioners by Robin Ziek, the staff liaison for the Commission. This Memo was not mentioned during the meeting. In reviewing the Memo, which was discovered online, it appears that there have been no new thoughts on this matter, and the information is all from many years ago. The Memo also concerns itself only with the Prettyman house giving no thought to the other historic houses on the street.

I urge you to reject this new application which, I understand, is in conflict with the zoning regulations and would be the first step in the destruction of a quiet, stable neighborhood. This is a new application and should not be treated as a re-run of an older application.


Jan Schiavone

PLT2012-00517/104 W. JEFFERS  
PC MTG 12-2012  
CITIZEN RESPONSE-SCHIAVONE



Comment for Final Record Plat PLT2012-00517  
Jan Schiavone to: planning.commission

05/18/2012 04:31 PM

	Jan Schiavone	Comment for Final Record Plat PLT2012-00517	05/18/2012

1 attachment



Fegan Subdivision second version.doc

To the Planning Commission:

I am forwarding my comments concerning a hearing to be held on May 23, 2012 as an attachment to this e-mail.

Jan Schiavone  
118 S. Van Buren Street  
Rockville, MD 20850

Public Comment for Final Record Plat Application PLT2012-00517:

Submitted by James McAdams Pontius of 128 South Van Buren Street.

Determination of Average Area of Existing Lots within 500 feet of  
the Proposed Resubdivision

(A) Summary

The average area of existing lots within 500 feet of the proposed resubdivision is determined to be 18,844 square feet. The phrase “existing lots” is defined in accordance with the City of Rockville, Maryland Zoning Ordinance and the Merriam-Webster dictionary. The size of existing lots is determined using exact property measurements from the website Zillow and best approximations of lot sizes from the GIS Map Viewer for the City of Rockville

(B) The resubdivision ordinance

Part 25.21.22 of the City of Rockville, Maryland Zoning Ordinance (hereinafter “Section 22”) recites that:

In any resubdivision of developed or undeveloped lots within an existing residential area, the plat must maintain, to the extent feasible, the average area and frontage of existing lots within 500 feet of the proposed resubdivision. This requirement supersedes the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots is smaller than the minimum requirements of the zone, in which case the minimum requirements of the zone apply.

(C) Defining an “existing lot”

In order apply Section 22, one must first determine what is meant by the phrase an “existing lot”. Part 25.03.02 of the City of Rockville, Maryland Zoning Ordinance (hereinafter “Section 02”) is titled “Words and Terms Defined”. Section 02 defines the term “lot” to be “a parcel or quantity of land”. Section 02 does not include the term “existing”, however Part 25.03.01 of the City of Rockville, Maryland Zoning Ordinance (hereinafter “Section 01”) recites that “[w]ords or terms not otherwise included are defined by their common dictionary meaning.” The Merriam-Webster dictionary defines the term “exist” as “to continue to be”. Combining these definitions results in an “existing lot” to be reasonably construed as a parcel or quantity of land that continues to be.

In the attached map, a radius of 500 feet has been drawn around the proposed subdivision at 104 West Jefferson Street to include 72 individual properties. These 72 properties are comprised of current and former churches, businesses, parks, parking lots and houses. All of these 72 properties are parcels as evident in the parcel lines shown in the attached map. Furthermore, all of these 72 properties continue to be parcels today just as they were in the past. Thus all of these 72 properties are “existing lots” because they are parcels of land that continue to be.

It would be unreasonable to restrict the term “existing lot” to only include houses. First, doing so goes against a rational interpretation of the term “existing lot”. Second,

there is nothing in Section 22 that requires such a narrow interpretation. Third, a property that one day is currently in use for one objective use can someday be used for another objective.

Examples shed further light on this third rationale. One example is the parking lot next to the Academy. Hypothetically, if the Rockville United Method Church (hereinafter "RUMC") decided to sell its parking lot, it is feasible to think that this parking lot could one day be used for one or more residences. Someone could remove the pavement and build one or more houses there. Furthermore, if for whatever reason, RUMC decided to move from its current location, RUMC could sell the church property. The land where the church property is currently located could also someday become one or more residences. I have seen former churches become residences and businesses, such as the property located at 101 West Jefferson Street. There, a historic former church is now the home of law offices.

For the above reasons, all 72 properties within a radius of 500 feet around the proposed subdivision at 104 West Jefferson Street should be included in the determination of the "average area" of "existing lots".

---

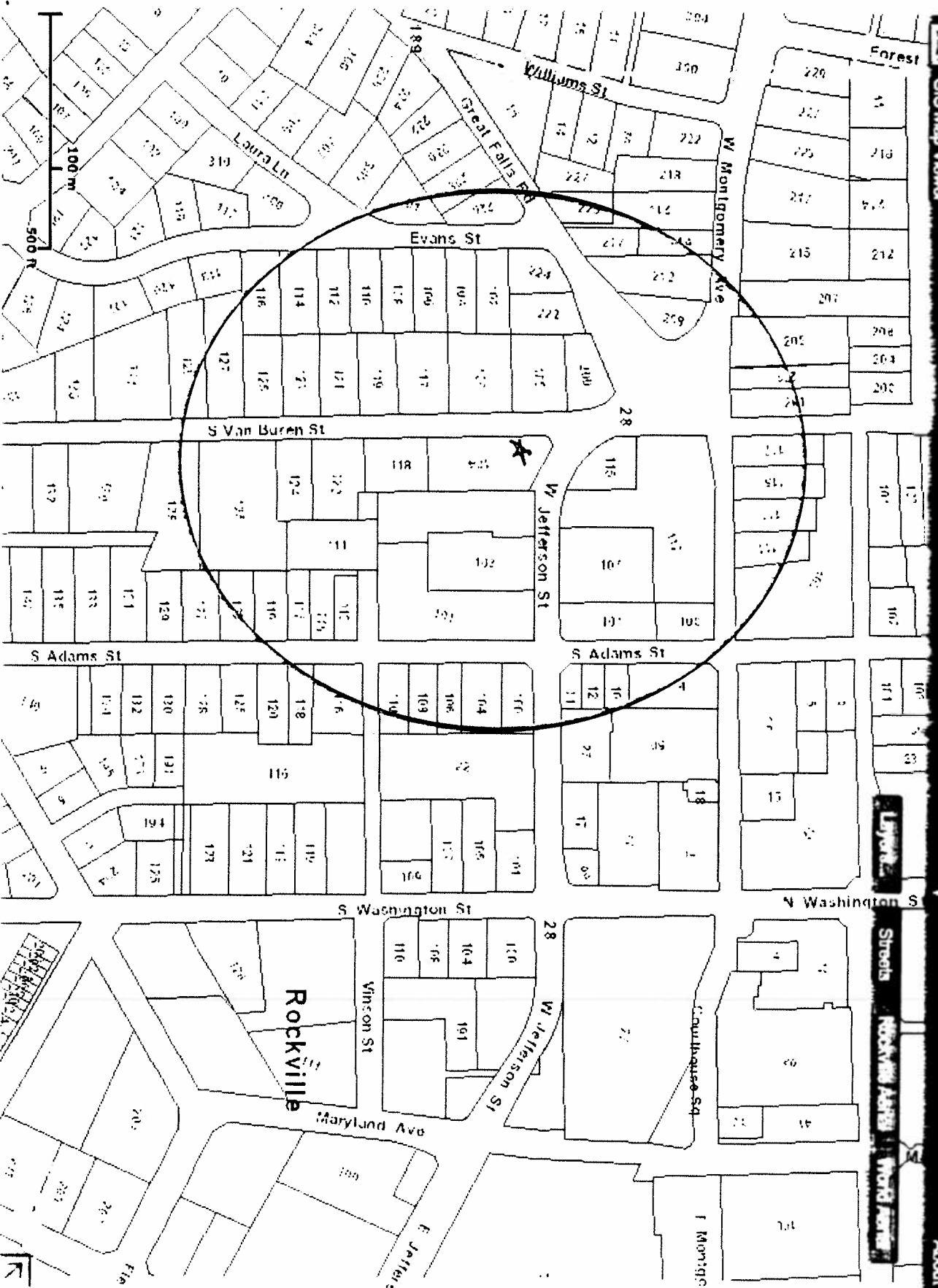
**(D) Determining the average area of existing lots within 500 feet of the proposed resubdivision**

As set forth above and in the attached map, there are 72 "existing lots" within 500 feet of the proposed subdivision at 104 West Jefferson Street. As evident in the attached spreadsheet, the total square feet for all 72 "existing lots" is 1,356,798 square feet. The

square feet for each existing lot in the attached spreadsheet is a reflection of the exact lot sizes available at <http://www.zillow.com/> and best approximations of lot sizes using the “draw and measure” feature of GIS Map Viewer for the City of Rockville available at <http://www.rockvillemd.gov/gis/> Dividing the total square feet for all 72 “existing lots”, which is 1,356,798 square feet, by the amount of “existing lots”, which is 72, results in the average area of the 72 “existing lots”, which is 18,844 square feet.

Thus the average area of the 72 “existing lots” is 18,844 square feet.

Correspondingly, the average area of “existing lots” within 500 feet of the proposed resubdivision is 18,844 square feet.



total # of properties	notes	Address	Size in square feet	
			from Zillow .com	from GIS of Rockville
		Evans Street		
1		101	12,963	
2		102	11,699	
3		104	12,060	
4		106	12,060	
5		108	12,060	
6		110	12,060	
7		112	12,060	
8		114	14,400	
9		116	14,400	
10		118	9,360	
		Great Falls Street		
11		222	12,079	
12		217	7,685	
13		224	11,668	
14		225	7,964	
15		226	10,452	
16		228	11,500	
		West Montgomery Avenue		
17		100	10,395	
18		103	63,423	
19		111	13,120	
20	church	112		92,377
21		113	12,608	
22		115	16,540	
23		117	13,000	
24		201	16,117	
25		203	10,890	
26		205	21,780	
27		207		55,818
28		208	9,554	
29		212	19,169	
30		214	9,110	
31		216	18,181	
		West Jefferson Street		
32		27		23,285
33		101		26,817
34	the acadmey church	103		38,678
35	parking lot	103.5		55,793
36		107		44,933
37		115		16,555
38		200	14,374	

		South Adams Street			
39		4			26,110
40		10			7,082
41		12			7,082
42		14			5,793
43		100		9,202	
44	JTW park	101			72,995
45		104		12,750	
46		106		7,499	
47		108		9,450	
48		110		9,450	
49		111		18,000	
50		113		6,950	
51		115		8,050	
52		116		15,937	
53		117		7,500	
54		118		9,100	
55		119		11,250	
56		120		13,125	
57		123		11,250	
58		127		11,250	
		South Van Buren Street			
59		105		20,473	
60		109		23,595	
61		117		19,965	
62		118		15,000	
63		119		14,520	
64		121		14,520	
65		122		18,615	
66		123		14,520	
67		124		12,990	
68		125		14,519	
69		126		46,499	
70		127		21,552	
71		128		33,061	
72		129		20,157	
1,356,798 square feet is the total square feet for all the properties					
18,844 square feet is the average property size					

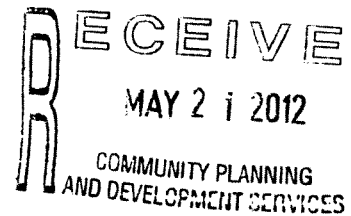
Public Comment for Final Record Plat Application PLT2012-00517  
james pontius  
to:  
planning.commission  
05/18/2012 11:53 PM  
[Show Details](#)

Please find attached Public Comment for Final Record Plat Application PLT2012-00517.

Best,

James Pontius

15 May 2012  
Planning Commission, City of Rockville



Final Record Plat Application (PL T2012-00517) Prettyman property resubdivision

Members of the Commission:

The resubdivision of the Prettyman property at the corner of Jefferson and S Van Buren Streets should be carefully considered for four reasons:

- 1) The Prettyman house is one of the most historically significant houses in Rockville
- 2) The current proposal does not meet zoning requirements or plat requirements in the new zoning laws.
- 3) The current proposal will have adverse effects on the Prettyman property, the surrounding historic homes and South Van Buren Street in general
- 4) An alternative resubdivision plan that will protect the Prettyman property from further development, maintain the aesthetics of the historic district, the street and allow the owner to develop the property is feasible and should be recommended.

The City of Rockville has changed drastically over the past 14 years. The west end has always been a pleasant place to walk, but now with the development of the town center, the expansion of neighborhoods there are more places to walk and more people walking there. Beall Elementary is bursting at the seams and the town center is full of kids every weekend.

That fourteen year span has been a long time in the development in Rockville. It was in 1998 that a proposal to resubdivide the Prettyman property was submitted. In reviewing the petitions to the Planning Commission from that period we noted the names of those five residents of South Van Buren Street who has died over that time. Yet of those five vacated residences, three are now occupied by offspring. On the street there are five homes that are occupied by second, third or fourth generations from South Van Buren Street. That is more than one quarter of the homes on the street.

While this might be typical of a small rural town, it is a bit surprising in the bustling exurb of Rockville. It reflects an appreciation of the community that draws in new resident and brings back offspring that grew up on the street. Third generation returning "kids" are planting native Maryland saplings that will long outlive them. Three houses on the street have undergone major renovation, representing a significantly larger investments than would be required to build elsewhere.

Will these investments be recouped when these houses are flipped and the residents leave? Clearly the investments in slow growing trees or renovated houses are for the long term enjoyment of the owners and the hope that their children will one day be

able to live in the close community that will continue to develop on South Van Buren Street.

That community and the aesthetics of South Van Buren Street are linked. They haven't been proscribed by zoning ordinances, nor legislated. The aesthetics of the street accrued over 120 years.

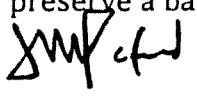
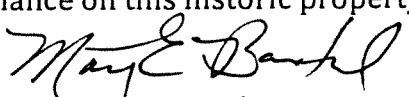
No common architectural totem is replicated between the houses, they are of a diverse style. But of the 18 houses on the street almost half are listed in the city's Catalog of Historic Buildings. There are colonial revivals but also a Victorian "shingle" and a wonderful bungalow, and our house an International style modernist house.

What makes the street so pleasing to walk through is a canopy of old hardwood trees, larger lots with proportional houses, driveways that lead to parking behind the house front in several property; garages that open from the side of houses. The lots are of varying size, the houses of varying design, the residents of various minds. The result is a community that could not be formed by government, but should be fostered by it.

***It is important to apply these ordinances, and especially consider the changes that have been made since 1998.*** New language stresses the importance of granting resubdivisions that meet requirements that "supersede" the minimal zoning category. Now the plat must address the feasibility of meeting those requirements.

***The applicant has not addressed these clear directives of the zoning ordinance.*** The proposed lot is 5000 square feet smaller than the average of residences within 500 ft. There are feasible resubdivisions of this lot that would meet zoning requirements.

***Preservation of the Prettyman property will be threatened by this resubdivision.*** A small lot, as proposed by the applicant would leave the potential, using the same rationale to create another lot from this property. An alternative to this is to resubdivide to make a larger lot. This would be more congruent with street, and preserve a balance on this historic property.

   
Jim Pickel and Mary Barnstead

15 May 2012

135 South Van Buren Street  
Rockville Maryland 20850

18 May 2012  
Planning Commission, City of Rockville

Final Record Plat Application (PL T2012-00517) Prettyman property resubdivision

Members of the Commission:

After attending the Historic District Commission meeting of 17 May 2012, it is clear that the resubdivision of the Prettyman Property is not being reviewed adequately.

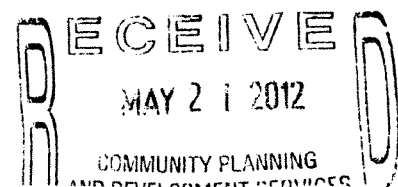
The Historic District Commission has not been directed to review this proposal, though the staff has generated information from a previous, outdated report (14 years old) for the Planning Commission.

The resubdivision proposal that comes before the Planning Commission should not be granted.

- 1) As noted in the Commissions previous findings this proposal did not meet the zoning requirements in 1999.
- 2) An exemption to those requirements was granted in the past but is not relevant to this new application.
- 3) The resubdivision does not conform to the new stronger language in the new zoning ordinance for resubdivision.
- 4) the current plat fails to address the feasibility of meeting the zoning standards as required by the zoning ordinance.
- 5) this resubdivision has not been reviewed by the Historic District Commission. Since the Prettyman property is one of Rockville's most historically significant homes this seems particularly important.
- 6) Alternatives to this plan would be more likely to maintain the Prettyman property in the more distant future, as well as complement this section of the historic district. Though these are feasible they have not been addressed by the applicant.
- 7) In fourteen years, much has changed in Rockville and a complete review of this new proposal must be initiated.

Jim Pickel and Mary Barnstead  
135 South Van Buren Street  
Rockville MD 20850



PLT2012-00517/104 W. JEFFER  
PC MTG 12-2012  
CITIZEN RESPONSE- Pickel Barn:

May 20, 2012

City of Rockville Maryland

Planning Commission

RE: Resubdivision of property at 104 W. Jefferson Street

Dear Sir or Madam:

With respect to the resubdivision of existing lots, which is at issue in this case, Section 25.21.22 of the Zoning Code directs that **the plat must maintain** (emphasis added), to the extent possible, the average area and frontage of existing lots within 500 feet of the proposed resubdivision. In this instance, the propose resubdivision clearly does not satisfy that provision of the Code.

The proposed resubdivision of the West Jefferson Street lot asks that the City of Rockville accept the creation of a new lot on that property of only 9000 square feet, when the Commission's staff's own report clearly states that the average area of lots within 500 feet of the lot under consideration is approximately 14000 square feet, but not less than 1200 square feet. Thus, it is also clear that the proposed resubdivision does not comply with the City's code.

In view thereof, it seems to be also clear that the Commission's staff's recommendation that this proposal be approved is in conflict with the City's Code. The staff's recommendation, then, appears to be an erroneous one. As a result, I ask that the Planning Commission reject the staff's recommendation and also reject this proposed resubdivision.

Sincerely,

*signed*

Charles Phipps

131 South Van Buren Street

Rockville, Maryland 20805

PLT2012-00517/104 W. JEFFERSON  
PC MTG 12-2012  
CITIZEN RESPONSE-C. PHIPPS

169

May 23rd Meeting: Resubdivision of 104 W. Jefferson  
CharlienPat2  
to:  
planning.commission  
05/21/2012 07:45 AM  
Show Details

Please consider the attached document with respect to the above issue. Please also note my opposition to the proposed resubdivision.

Charles Phipps  
131 South Van Buren St.  
Rockville, MD 20850  
301-279-2792

161

Public Comment for Final Record Plat Application PLT2012-00517:

Submitted by James McAdams Pontius of 128 South Van Buren Street.

## Interpretation of the Resubdivision Requirements

### (A) Overview

This public comment interprets the requirements for resubdivision with a primary focus on the issue of what is meant by the phrase “the plat must maintain, to the extent feasible, the average area.”

Analysis shows this phrase has the mandatory requirement that the average area be maintained. This is mostly based on the term “must” immediately preceding the term “maintain.” By definition of the term “must” in the Zoning Ordinance, “must” is always mandatory and never discretionary. The “to the extent feasible” language adds a level of discretion as to whether maintenance of the average area would result in success. Success is present if the average area is maintained and there is no failure. Failure is a destruction of the historic nature of a historic home or property.

Practically speaking, if all lots in a resubdivision are equal to or greater than the average area of existing lots and there is no failure, the resubdivision should be approved. This is because the average area is maintained and there is success in the maintenance.

On the other hand, if any lot in a resubdivision is less than the average area of existing lots, the resubdivision should be denied. This is because the average area is not maintained.

**(B) Analysis of the “must maintain” language**

Part 25.03.02 of the City of Rockville, Maryland Zoning Ordinance (hereinafter “Section 02”) provides the following insight for the term “must”: “[t]he words ‘shall,’ ‘may not,’ and ‘must’ are always mandatory and not discretionary.” Therefore the plat is required to maintain the average area of existing lots. Contrarily, maintenance in the plat of the average area of existing lots is not discretionary. The plat must maintain the average area.

Section 02 does not define the term “maintain” but the Merriam-Webster dictionary defines the term “maintain” as “to keep in an existing state”, “preserve from failure or decline”, “to sustain against opposition or danger”, “uphold and defend”, “to continue or persevere in”, “carry on, keep up”, “to support or provide for”, “sustain”, “to affirm in or as if in argument” and “assert”. The common thread in all these definitions, except the last two, is that term “maintain” defines a prevention of lessening.

If an average area is decreased, a lessening is present. The average area is not maintained. On the other hand, if an average area is increased, a lessening is not present. The average area is maintained. Thus, a reasonable, workable and clear interpretation of the term “maintain” is to “preserve from decline.”

A big problem is associated with interpreting the term “maintain” to reflect “to affirm in or as if in argument” and “assert” an average area. A plat would maintain the average area in a sense of “to affirm in or as if in argument” and “assert” the average area only if the exact average area was present in all proposed lots.

Thus, so far the resubdivision ordinance requirement that “the plat must maintain... the average area” indicates that “the plat is required to preserve from decline... the average area.”

Practically speaking, if all lots in a resubdivision are equal to or greater than the average area of existing lots, the plat maintains the average area. This is because the lots do not lessen the average area. All lots preserve the average area from decline. The application might be ready for approval, but would have still to pass muster under the remainder of the ordinance, i.e. be feasible and larger than the minimum zoning requirements.

Practically speaking, if any lot in a resubdivision is less than the average area of existing lots, there is no evidence to support that the new and smaller lot maintains the average area. At this point, the inquiry should stop. The application should be denied.

(C) Analysis of the “to the extent feasible” language

Section 02 does not include the phrase “to the extent feasible” or the term “feasible” but the Merriam-Webster dictionary provides two definitions for the term “feasible”. First is “capable of being done or carried out.” Second is “capable of being used or dealt with successfully.”

Using the first definition of “feasible” would result in no discretion. This is because the mandatory maintenance of an average area is inherently capable of being done. Once maintenance is established, by its very nature the maintenance is capable of being done.

Using the second definition of “feasible” would result in discretion, which might be a good thing. Discretion is present to determine whether maintenance of the average area was successful. If maintenance of an average area harms the historic character of a historic building or property, then there is not success. Instead there is failure. There is no success in the destruction of the historic character of a historic building or property. This is an advantage of the second definition of “feasible”. It allows for discretion to deny an application for resubdivision even if the average area was maintained in the interest of preserving history.

The discretion present with the second definition, however, is rather small. This is because the only discretion present is the ability to determine whether maintenance of the average area was successful. Maintenance of the average area is still mandatory and is not affected by this discretion.

Another way of looking at the discretion of determining success is to view this discretion as an exception similar to the required maintenance of the average area exception present in the second sentence of the resubdivision ordinance. The second sentence recites that “[t]his requirement [the mandatory requirement that the plat must maintain the average area] supersedes the minimum lot size and frontage requirements of the applicable zone, except where the average lot size or frontage of the existing lots is smaller than the minimum requirements of the zone, in which case the minimum requirements of the zone apply.” This sentence provides an exception to maintenance of the average area. If the average area is below the minimum zone requirements, maintenance of the average area would not lead to approval of a resubdivision. Much like the exception in the second sentence, the phrase “to the extent feasible” in the first

sentence can be viewed as an exception. If maintenance of the average area does not result in a successful outcome, this maintenance would not lead to approval of a resubdivision.

It is noted that the second sentence adds credence to the logic that maintenance of the average area is mandatory. The second sentence recites "this requirement." It does not recite "this optional principle." There is only one requirement appearing in the first sentence. This requirement is "must maintain."

**(D) Common Sense Approach**

Not all lots in Rockville are authorized under the resubdivision ordinance for approval. Only lots that have enough land are suitable for resubdivision. The minimum zoning requirements establish a floor for resubdivisions. The mandatory maintenance of the average area of all resubdivisions ensure that at least an average sized lot is created in a neighborhood where the lot sizes are quite larger than the minimum zoning requirements. This mandatory requirement prevents a lot size that is barely above the minimum zoning requirements from being created.

A 9,057 square foot lot should not be allowed when the average lot in the area is over twice that size. I grew up within 500 feet of the proposed subdivision at 127 South Van Buren Street. The lot at 127 is 21,552 square feet. I still live within 500 feet of the proposed resubdivision at 128 South Van Buren Street in a house I bought with my brother. Our lot at 128 is 33,061 square feet. The lot of my neighbor at 126 South Van Buren Street, which is closer to the resubdivision than my parents or I, is 46,499 square feet. How does a 9,057 square foot lot fit in with the three of our lot sizes? We live in an

R-90 district. This is 57 feet above the minimum. The common sense answer is not at all.

The smallest house on my street within 500 feet of the proposed resubdivision is at 124 South Van Buren Street. The lot size at 124 is 12,990 square feet. How does a 9,057 square foot lot fit in with the lot size of the smallest house considered on my street? The proposed lot is almost 1/3 less than the lot size at 124. The common sense answer is not at all.

My neighborhood is going to be greatly affected by adding a tiny 9,057 square foot lot on my street. When I look at the resubdivision ordinance, I see a rule designed to protect the average area of lots. I do not see a rule with vast discretion that pretty much says discard the average area and just be bigger than the R-90 minimum. I humbly request the Planning Commission use common sense in their dealings with the resubdivision ordinance for this application.

**(E) Note on average frontage**

Throughout this public comment, emphasis has been placed on the average area without really discussing the average frontage. This was done to simplify discussion and in no way was meant to lessen the merit of the average frontage. The average frontage remains equally as important as the average area.

**(F) Quick Reference Guide**

For all you math majors, tax experts and accountants, here is a reference guide that I hope provides for a quick way to determine whether lots in an application for resubdivision should be approved:

- 1) Determine the area and frontage for each proposed lot in this application.
- 2) Determine the average area and frontage of existing lots within 500 feet of the proposed resubdivision.
- 3) Is the average area and frontage from step 2 equal to or greater than the area and frontage of the minimum zone requirements?
  - a. If not, approve the application if the minimum zone requirements are met and deny the application if the minimum zone requirements are not met.
  - b. If so, proceed to step 4.
- 4) Is the area and frontage from step 1 equal to or greater than the average area and frontage from step 2?
  - a. If not, the application should be denied.
  - b. If so, proceed to step 5.
- 5) Does any lot in this application destroy the historic character of any nearby historic building or property?
  - a. If not, approve the application.
  - b. If so, deny the application.

Public Comment for Final Record Plat Application PLT2012-00517  
james pontius  
to:  
planning.commission  
05/18/2012 11:53 PM  
[Show Details](#)

Please find attached Public Comment for Final Record Plat Application PLT2012-00517.

Best,

James Pontius



Public Comment for Final Record Plat Application PLT2012-00517:

Submitted by James McAdams Pontius of 128 South Van Buren Street.

## Response to the Staff Reports

### (A) Overview

The Staff Report excludes some properties that are within 500 feet of the proposed resubdivision in determining the average area. Doubts exists as to why the Methodist Church parking lot, the Academy and the Methodist Church itself, among a number of other properties, were excluded from the average area. It is unclear from reading the Staff Report the amount of discretion that the Planning Commission has in applying the resubdivision ordinance. In order to avoid reversal on appeal, or maybe avoid appeal altogether, a clear indication of what is meant by the language "to the extent feasible" in the resubdivision ordinance and how to apply it, as well as what "existing lots" includes, might help.

### (B) Average Lot Area

The May 16, 2012 Planning Commission Staff Report (hereinafter referred to as the "2012 Staff Report") and the included attachments set forth that the average area of existing lots within 500 feet of 104 West Jefferson Street is 14,430 square feet. This average area excludes non-residentially occupied properties. The 2012 Staff Report's justification for this exclusion is that non-residentially occupied properties are not the same use and are, more often than not, made up of multiple lots (See attachment 6-3 of

the 2012 Staff Report, in the middle of the page, before and after footnote 1). I am not a land use expert, but this number and rationale do not make sense to me for the following reasons.

As set forth in attachment page 2-1 of the 2012 Staff Report, the Methodist Church parking lot that is adjacent to 104 West Jefferson Street currently has the same use as 104 West Jefferson Street, PRSFD (preferred residential – single family detached). My calculations tell me that this parking lot was not included in the average area of 14,430 square feet. This doesn't make sense to me. It has the same PRSFD use as 104 and other properties on South Adams Street. Maybe it's because the parking lot is 55,793 square feet. But excluding based on this doesn't make sense to me either. This is only 9,294 square feet larger than my neighbor's property of 46,499 square feet at 126 South Van Buren Street, which is within 500 feet of the proposed resubdivision.

As set forth in page 2 of the 2012 Staff Report and attachment page 3-1, the Methodist Church parking lot is zoned R-90. This is the same zoning as my house, which is within 500 feet of the proposed resubdivision. Why is my property included in the average area but another property with the exact same zoning is excluded?

My calculations tell me that the Academy, the Methodist Church itself, and a number of other properties were excluded from calculation of the average area. I can see that the 2012 Staff Report did this because these properties are non-residentially occupied properties. I really don't understand this logic for excluding properties in the 2012 Staff Report.

As set forth in attachment page 3-1 to the 2012 Staff Report, both the Academy, which is next to the Methodist Church parking lot, and the Method Church itself are

zoned as MXT (Mixed-Use Transition). As set forth in Sections 25.13.01-02 of the City of Rockville Zoning Ordinance, (hereinafter referred to as “Mixed-Use Section”), MXT has the purpose of residential use and the “distinguishing feature” of residential neighborhoods. It makes sense to me to include the Academy and the Methodist Church because their zoning includes residential use and residential neighborhoods. Are these properties excluded from the average area because they currently are not a house, even though they are zoned so that they one day could be? If so, this has the potential to make application under the resubdivision ordinance a game of chance based on whether a family or a business currently occupies the Academy.

Maybe the Academy and the Methodist Church were excluded because their size might skew the average area? But this isn’t the case. The Academy is 38,678 square feet. My property at 128 is 33,061 square feet and within 500 feet of the proposed resubdivision. My neighbor’s property at 126 is 46,499 square feet, which by itself is larger than the size of the Academy. The size of the Methodist Church is 92,377 square feet, which is slightly less than double the size of my neighbor’s property at 126 of 46,499 square feet and within 500 feet of the proposed resubdivision.

Two other properties that are within 500 feet of the proposed subdivision, but excluded from the average area, are zoned as MXNC (Mixed-Use Neighborhood Commercial). The Mixed-Use Section indicates that MXNC properties have the “distinguishing feature” of residential uses. For this reason, it makes sense to me to include the sizes of these lots because they could be residential.

Jacqueline Trellis Williams Park, adjacent to the Academy on South Adams Street, is just a part of my neighborhood as the lot at 104 West Jefferson. I pass both on

my daily walk to and from the Rockville Metro. I can at least play frisbee at the Jacqueline Trellis Williams Park. I would be trespassing if I did this on private property.

**(C) Amount of Discretion**

After reading the 2012 Staff Report and the included attachments, the question still remains with me, “What is the level of discretion, appearing at the bottom of page 6 of the 2012 Staff Report, that the resubdivision ordinance allows.” I couldn’t tell from reading these documents.

I also couldn’t tell from reading these documents when it would ever be appropriate to deny a resubdivision that is less than the average area of existing lots within 500 feet. How much larger does the average area have to be with regard to a lot in a proposed resubdivision to ever warrant denial for a resubdivision? There has to be some limit, but I cannot tell what this limit is from the 2012 Staff Report.

**(D) Common thread**

As evident in the 2012 Staff Report and the included attachments, this application has quite a convoluted and complex history. A common thread throughout these documents is use of 14,430 square feet as the average area. Everything was based on this value, which makes sense because the average area is critical to the resubdivision ordinance. If this value was found to be incorrect, then it logically follows that all findings based on this incorrect number might also be incorrect. An update in the average area would likely have the effect of distinguishing the current application from previous applications.

**(E) Appeals**

In the previous application for resubdivision at 104 West Jefferson Street, the application was appealed twice. I think all parties presently involved would appreciate avoiding going down the appeal route again.

During the first appeal, the Circuit Court reversed. This is because the Circuit Court was unable to determine the level of feasibility established and used by the Planning Commission (See attachment page 8-9 of the 2012 Staff Report, last full paragraph). In order to avoid a potential reversal, and maybe avoid an appeal altogether, it would make sense to me if the Planning Commission said what is meant by the language “to the extent feasible” in the resubdivision ordinance and how to apply it.

The first appeal also used 14,430 square feet as the average area. This value was assumed to be valid by the time it reached the Circuit Court. I have cast some reservations that are reasonable about using 14,430 square feet to be the average area, as shown above and in my previous public comments. While this issue wasn’t raised last time on appeal, it certainly could be raised this time.

Which of the following options for defining “existing lots” would make more sense to a reviewing judge? Define “existing lots” to include one R-90 lot but not another R-90 lot? Define “existing lots” to exclude non-residentially occupied properties? Define “existing lots” to exclude lots that are not the same use but have the same zoning? Define “existing lots” to exclude lots that are, more often than not, made up of multiple lots but that are still smaller than other lots that are included. Or define “existing lots” to include just that, “existing lots”?

# ROBIN R. TALBOTT

122 S. Van Buren Street, Rockville, Maryland 20850 rrtalbott@aol.com

May 18, 2012  
Planning Commission  
11 Maryland Avenue  
Rockville, MD 20850

Dear Planning Commission:

My family and I, being generational S. Van Buren Street property owners, oppose the re-subdivision of 104 East Jefferson Street, Rockville, MD on historical and ecological grounds.

I have a Masters in Fine Art Degree in the Conservation of Artistic and Historic Works. I have worked for over forty years with museums to preserve and protect our cultural heritage, both public and private.

**My family and I are hereby petitioning the Planning Commission, myself as a museum professional in addition to all of us being concerned citizens, to request both a review and opinion on this re-subdivision of the lands and grounds of the historic Prettyman home at 104 West Jefferson Street.**

I have been concerned, for some time, at the previous and current owners of the historic Prettyman property disregard for the historic significance of the property. Historic boxwoods and trees have been cut down without oversight from those who manage the historic trees in the City of Rockville. In addition, a used furniture business has been regularly conducted as pieces were refurbished in a workshop and sold to passer's by from the front yard, in an on going "yard sale."

Both the current and previous owner of 104 West Jefferson, have tried to financially profit from re-subdividing the property to the detriment of the property, other property owners and the people of the City of Rockville, Montgomery County and the State of Maryland.

The following points are important:

- The current owners were aware of the historical nature of the property and the neighborhood's overall opposition to its division when they purchased the property. In fact, their awareness is on record as they refused to continue the court proceeding and stated they had no intention of re-subdividing the property.
- The current owners have apparently changed their mind and now intend to financially profit from re-subdividing the property at the expense of everyone in the neighborhood, the very same households who have continuously and consistently opposed any re-subdivisions since the concept's introduction in 1998. None of those opposed to the re-subdivision have ever wavered in their opposition.
- This re-subdivision would also be at the expense of the people of the City of Rockville, Montgomery County and the State of Maryland as this historical property, officially recognized as such by a Historic Designation and historical markers in front of the site, would for all time and eternity be compromised against the public good.
- Re-subdivision of the property would also go against the historical intent of the neighborhood, who original owners intentionally joined together and purchased double lots up and down S. Van Buren Street insuring that ecologically sound green space would exist in perpetuity.
- On the property directly next to the re-subdivision, a great injustice would occur, should plans go through. 118 S. Van Buren Street has only had three owners: 1) The Prettymans, who owned all of the land from which S. Van Buren Street originates, in fact, S. Van Buren Street was the Prettyman's property's carriage lane; 2) James and Lydia Brunett and 3) Mike and Jan

Schivone. The Schivones purchased the property in 1963 and after Mike's death, Jan has continued to live there. Building on the small lot resultant from the re-subdivision would eliminate large, generational trees that now shade Ms. Schivone's house and grounds. In addition, the proximity of the house would directly lower her property value and lower the property values of the other homes on S. Van Buren Street, which would never again have the same grand green space that they do now.

- Most of the property owners on S. Van Buren Street are generational property owners. Six of the properties are associated with three families, the Higgins, of the Higgins of the Higgins Family Cemetery, the Parks family and the Pontius family.
- William R. and Laura Magruder Higgins Talbott built 122 S. Van Buren Street and Laura's sister Dorothy Lawrence Higgins MacDonald and her husband John, owned and built 126 S. Van Buren Street. Both homes are still in their descendant families. William R Talbott, Sr. was an architect for the Veteran's Administration, who also designed the Methodist and Presbyterian Churches on West Montgomery Ave in Rockville.
- The Parks family owns 119 S. Van Buren Street, now in its second generation
- The John Pontius family owns 127 S Van Buren Street while sons John and James Pontius own the house across the street, 128 S. Van Buren Street.
- Most go the rest of the properties are held by long time owners who have invested years into maintaining their gracious green spaces. In fact, to many S. Van Buren Street is known as the "prettiest street in Rockville, due to this generational concern for greenspace.
- Sincerely yours,
- Robin R. Talbott
- Kevin W. Palmer
- William R. Palmer



Information request regardng Final Record Plat PLT2012-00517

james pontius to: history, historicdistrict

06/08/2012 03:49 PM

View: (Mail Threads)

Historic Preservation staff,

I am in favor of denying Final Record Plat PLT2012-00517. In order to develop my strategy and be the most effective, I would like to see what has worked for previous recommendations for denials of subdivision and re-subdivisions by the HDC and see if those facts are similar to the current facts.

Could someone at the Historic Preservation staff please provide me with a couple previous courtesy reviews and/or recommendations by the HDC where the HDC recommended denial of a proposed subdivision or re-subdivision to the Planning Commission? More recent recommendations of denials would be best, but I will take what I can get.

Please note that I am new to this. I am not sure if "denial" is the correct term. By "denial" I mean not recommending "approval". I know that there are staff reports that are prepared by City of Rockville employees for the benefit of the Planning Commission. If there exists any similar staff reports, memorandums, or other pieces of writing from the City of Rockville to the HDC, and/or from the HDC to the Planning Commission, recommending denial of a proposed subdivision or re-subdivision, I would really like to take a look at them as well.

If no such documents exist at all or if no documents exists because I'm using the wrong terms, please let me know as well.

I hope this doesn't take up too much of your time. Have a good weekend!

Best,

James Pontius  
128 South Van Buren Street

173



Regarding the petition to divide Plat PLT2012-00517  
chris law to: HistoricDistrict

06/09/2012 10:28 AM

View: (Mail Threads)

Regarding the petition to divide Plat PLT2012-00517.

As the Executor to Dr. John R. Laws estate. This request was made while he owned the subject property and was rejected by the Major and Counsel. This caused Dr. John R. Law to sell his house and move, causing considerable emotional and financial hardship to him and his family. If the City moves forward to approve the current request, as Executor of Dr. John R. Laws estate, we will sue the city to seek compensation and damages related to the Rockville Major and Counsels prior rejection of Dr. Laws same request to sub-divide Plat PLT2012-00517 into two lots.

-Christopher Law

174